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		6 Estate of M.Z.,	7 duly sworn, was examined and
STREWALT & ASSOCIATES 1			8 testified as follows:
10 SY M. SIEPT:			9 EXAMINATION
State your name for the record, please. 12		9 City of Sioux Falls,	10 BY MR. SIEFF:
March 12 A. Kenneth Nemire.		10 Defendant.	09:04:11 11 Q. State your name for the record, please.
## Month 15 Contract Contract		11	09:04:12 12 A. Kenneth Nemire.
1		12	09:04:15 13 Q. And you are a hold a Ph.D.; is that
15 SECOND TO CONTINUES			
15 WOLDER 1: NAMES 1: 141 16 ARREST 19: 170 March 1 NAMES 1: 141 17 APPEARANCES: 2 18 APPEARANCES: 2 19 On Behalf of the Plaintiff: Philip Self-183-1835 infe/self-invall.com 20 On Behalf of the Plaintiff: Philip Self-183-1835 infe/self-invall.com 21 APPEARANCES: 2 22 On Behalf of the Plaintiff: Philip Self-183-1835 infe/self-invall.com 23 Self-183-1835 infe/self-invall.com 24 APPEARANCES: 2 25 On Behalf of the Plaintiff: Philip Self-183-1835 infe/self-invall.com 26 APPEARANCES: 2 27 On Behalf of the Plaintiff: Philip Self-183-1835 infe/self-invall.com 28 Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 30 South Philips Avenue 300 South Philips Avenue 310 South Philips Av		14 DEPOSITION OF KENNETH NEMIRE, Ph.D., CPE	
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1		16 AUGUST 20, 2019	
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of California in Santa Cru2? 21 List, 862 Labeliae Avenue, Saltic 2809, in the City of 22 M. You, also hold a Bachelor of Sciences in 3 representately 913 of clock a.m., August 28, 2015.1 22 Constitution of the Plaintiff: 23 Particle Your Constitution of the Plaintiff: 24 A PPERARANCES: 25 On Behalf of the Plaintiff: 3 Particle Your Constitution of the Plaintiff: 4 ROBINS KAPLAN LLP 800 LaSalle Avenue Suite 280, Minnespota 55402-2015 6 On Behalf of the Defendant: 7 James E. Moore Woods, Fullery, Sulutz & Smith, P.C. P.O. Box 5027 9 300 South Phillips Avenue Suite 300 10 Sioux Falls, South Dakota 57117-5027 11 ALSO PRESENT: 12 Ronald M. Huber, Videographer 13 Leonard, Aug. 256, 2018, with a Richard Science of the Constitution of the Minnespota Science of the Constitution of the Constitution of the Constitution of the Phillips Avenue Suite 300 15 SEXAMINATION INDEX EXAMINATION PAGE Number of the Constitution of the Constitution of the Constitution of the Constitution of the Phillips Avenue Suite 300 10 South Falls, South Dakota 57117-5027 11 ALSO PRESENT: 12 Ronald M. Huber, Videographer 13 Leonard, Aug. 26, 2018, with a STIREWALT & ASSOCIATES 14 WITNESS EXAMINATION INDEX EXAMINATION NDEX EXAMINATION PAGE Number of the Constitution of the Phillips Avenue Suite 300 15 SEXAMINATION PAGE Number of the Constitution of the Constitution of the Constitution of the Phillips Avenue Suite 300 16 SOUTH DAKOTA, 34 pgs. 27 Jan. 31, 2019, 7 pgs. FACTORS 3 ANALYSES OF A FALL AND BROWNING IN A RIVER AT FALLS PARK, SIOUX PAGE 19 A No. 28 STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES 29 Jan. 31, 2019, 7 pgs. FACTORS 3 ANALYSES OF A FALL AND BROWNING IN A RIVER AT FALLS PARK, SIOUX PAGE 19 A No. 28 STIREWALT & ASSOCIATES 29 Jan. 31, 2019, 7 pgs. FACTORS 3 ANALYSES OF A FALL AND BROWNING IN A RIVER AT FALLS PARK, SIOUX PAGE 19 A No. 20 Jan. 31, 2019, 7 pgs. FACTORS 3 ANALYSES OF A FALL AND BROWNING IN A RIVER AT FALLS PAGE 19 A FALL AND BROWNING IN A RIVER AT FALLS PAGE 19 A FALL AND BROWNING IN A RIVER AT FALLS		18 (The following is the deposition of KENNETH	
21 LET, 800 Lebatic Avenue, Buite 2850, in the City of 22 Minnespoils, State of Minnespoils, state of Minnespoils, Amount 20, 2019-1 24 CO. You are not a medical doctor; correct? 25 CO. You are not a medical doctor; correct? 26 STIREWALT & ASSOCIATES 27 STIREWALT & ASSOCIATES 28 STIREWALT & ASSOCIATES 3 Patricial You are not a medical doctor; correct? 3 Patricial You are not a medical doctor; correct? 3 Patricial You are not a medical doctor; correct? 3 Patricial You are not a medical doctor; correct? 3 STIREWALT & ASSOCIATES 4 A. Yes. 4 Pos. 5 CO. You are not a medical doctor; correct? 5 STIREWALT & ASSOCIATES 4 A. That's correct. 4 COMMAN 7 Falls, Bou-553-1953 info@stirewalt.com 4 COMMAN 7 Falls, South Correct? 4 ROBINS KAPLAN LLP 8 ROBINS KAPLAN LLP 8 ROBINS KAPLAN LLP 8 OU LSSalie Avenue 5 SULE 2800 6 Minneapoils, Minnesota 55402-2015 6 Minneapoils, Minnesota 55402-2015 6 Minneapoils, Minnesota 55402-2015 7 James E. Moore 9 GOUSSAIE Avenue 9 GOUSSA		19 NEMIRE, Ph.D., CPE, taken pursuant to Notice of	09:04:24 19 Q. You received your Ph.D. from The University
22 Minnespotis, State of Minnesota, commencing of 23 agrees insteady \$1:03 of clock x.m., August 26, 2015.1 24 25 26 27 27 28 290437 24 A. Yes. 25 27 28 290437 25 O. You are not a medical doctor; correct? 26 3 Philip Self Patricia Yoedicke ROBINS KAPLAN LLP RATICIA Yoedicke ROBINS KAPLAN LLP Suite 2800 Minneapolis, Minnesota 55402-2015 26 On Behalf of the Defendant: 27 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 55402-2015 28 Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 310 South Philips Avenue Suite 360 Minneapolis, Minnesota 5717-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5717-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 5718-5027 300 South Philips Avenue Suite 360 Minneapolis, Minnesota 57402-2015 300 South Minneapolis, Minneapolis, Minnesota 57402-2015 300 South Minneapolis		20 Taking Deposition, via videotape, at Robins Kaplan,	09:04:27 20 of California in Santa Cruz?
23 Approximately \$103 or clock a.m., August 20, 2019.1 24 25 26 27 28 27 28 28 29 30 You are not a medical doctor; correct? STIREWALT & ASSOCIATES 1-800-553-1953 info@stirewalt.com 4 3 PPEARANCES: 2 On Behalf of the Plaintiff: Philip Sieff Patricia Yoelicke ROBINS KAPLAN LLP ROBINS KAPLAN LLP SUIte 2800 Minneapolis, Minnesota 55402-2015 On Behalf of the Defendant: James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 James E. Moore Woods, Fuller, Moore James E. Moore Woods, Fuller, Moore James E. Moore James E. Moore James E. Moore J		21 LLP, 800 LaSalle Avenue, Suite 2800, in the City of	09:04:30 21 A. Yes.
### 1		22 Minneapolis, State of Minnesota, commencing at	09:04:30 Q. You also hold a Bachelor of Sciences in
1 APPEARANCES: 1 -800-593-1953 info@stirewalt.com 2 1 APPEARANCES: 2 1 On Behalf if the Plaintiff: 3 Patricia Yoedicke 4 ROBINS KAPLAN LLP 800 LaSalie Avenue 5 Suite 2800 Minneapolis, Minnesota 55402-2015 6 On Behalf of the Defendant: 1 James E. Moore 8 Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 9 300 South Phillips Avenue 2 10 Robins South Parising Avenue 3 11 A. That's correct. 90/44 2 Q. All right. Dr. Nemire, you are testifying Avenue 4 2 Q. All right. Dr. Nemire, you are testifying Avenue 5 Suite 2800 Minneapolis, Minnesota 55402-2015 6 On Behalf of the Defendant: 9 James E. Moore 9 Woods, Fuller, Shultz & Smith, P.C. P.O. Box 5027 9 300 South Phillips Avenue 10 Silve 391 A. Yes. 11 ALSO PRESENT: 12 Ronald M. Huber, Videographer 13 EXAMINATION INDEX Dr. Nemire Mr. Sieff 3 A. Yes. 14 WITNESS EXAMINED BY PAGE Dr. Nemire Report, HUMAN FACTORS A Ne		23 approximately 9:03 o'clock a.m., August 20, 2019.)	09:04:34 23 something called psychobiology; is that correct?
### APPEARANCES: 2		24	09:04:37 24 A. Yes.
1 APPEARANCES: 2 On Behalf of the Plaintiff: 3 Philip Side Plaintiff: 4 Patricia Yedicke 5 Suite 2800 6 Minneapolis, Minnesota 55402-2015 6 On Behalf of the Defendant: 7 James E. Moore 8 Woods, Fuller, Shultz & Smith, P.C. 9 P.O. Box 5027 9 300 South Philips Avenue Suite 300 10 Sioux Falls, South Dakota 57117-5027 11 ALSO PRESENT: 12 Ronald M. Huber, Videographer 13 EXAMINATION INDEX EXAMINED BY PAGE Dr. Nemire Page The Memire CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 14 WITNESS EXAMINED BY PAGE Dr. Nemire Report, Hulman Factors 3 ANALYSES Of A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 15 SOUTH DAKOTA, 34 pgs. 16 STIREWALT & ASSOCIATES 1 APPEARANCES: 2 On Behalf of the Pefendant: 3 Octobro 1 Decision		25	09:04:37 25 Q. You are not a medical doctor; correct?
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8	7	James E. Maara	
9	8		09:04:54 7 Falls and its attorney, Mr. Moore;
Suite 300 Sioux Falls, South Dakota 57117-5027 11 ALSO PRESENT: 12 Ronald M. Huber, Videographer 13 EXAMINATION INDEX Dr. Nemire Mr. Sieff 15 EXHIBIT INDEX DESCRIPTION Nemire 16 EXHIBIT DESCRIPTION Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, Human Factors SOUTH DAKOTA, 34 pgs. 19 A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 4 email, Hall to Kirkus, Kearney and 236 4 email, Hall to Kirkus, Kearney and 236 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. STIREWALT & ASSOCIATES 10 "Yes"? 11 A. Yes. 12 Q. Did you bring your file with you today? 13 A. Yes. 14 Q. Whereabouts is it? 20 A. In front of me. 20 3 All right. We'll take a look at that in a 20 3 Photo, 1 pg. 4 email, Hall to Kirkus, Kearney and 236 21 Constant of the past four years; does that sound about right? 22 A. Four years? 23 A. Four years? 24 Q. Yes. 25 STIREWALT & ASSOCIATES	۵		09:04:56 8 A. Yes.
11 ALSO PRESENT: 12 Ronald M. Huber, Videographer 13 EXAMINATION INDEX 14 WITNESS EXAMINED BY PAGE Dr. Nemire Mr. Sieff 3 15 EXHIBIT INDEX 16 EXHIBIT DESCRIPTION PAGE Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 234 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 21 STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES		Suite 300	09:04:57 9 Q. is that correct?
12 Ronald M. Huber, Videographer 13 EXAMINATION INDEX 14 WITNESS EXAMINED BY PAGE Dr. Nemire Mr. Sieff 3 15 EXHIBIT INDEX 16 EXHIBIT DESCRIPTION PAGE Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 234 4 email, Hall to Kirkus, Kearney and 236 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 23 24 25 STIREWALT & ASSOCIATES 19 STIREWALT & ASSOCIATES 10 090500 12 Q. Did you bring your file with you today? 10 090502 13 A. Yes. 10 090502 15 A. In front of me. 10 090503 16 Q. All right. We'll take a look at that in a 10 090509 18 You're familiar with the deposition process; 10 090511 19 is that correct? 20 A. Yes. 21 Q. You've testified approximately 110 times in 22 the past four years; does that sound about right? 23 A. Four years? 24 Q. Yes. 25 STIREWALT & ASSOCIATES	10	Sioux Falls, South Dakota 57117-5027	09:04:58 10 "Yes"?
13 EXAMINATION INDEX EXAMINED BY Dr. Nemire Mr. Sieff EXHIBIT Nemire 16 EXHIBIT Nemire 17 EXHIBIT DESCRIPTION Nemire 17 EXHIBIT Nemire Nemire 18 EXHIBIT DESCRIPTION PAGE Jan. 31, 2019, 7 pgs. ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. A email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. STIREWALT & ASSOCIATES DESCRIPTION PAGE No. 09:05:02 13 A. Yes. 09:05:03 14 Q. Whereabouts is it? Q. All right. We'll take a look at that in a 109:05:05 16 Q. All right. We'll take a look at that in a 109:05:05 17 minute. 109:05:05 18 You're familiar with the deposition process; 19 is that correct? 20 A. Yes. 19 Q. You've testified approximately 110 times in 109:05:10 21 22 23 24 25 26 27 28 29 29 20 20 21 21 22 23 24 25 STIREWALT & ASSOCIATES	11	ALSO PRESENT:	09:04:59 11 A. Yes.
13 EXAMINATION INDEX Dr. Nemire Mr. Sieff 3 EXHIBIT INDEX DESCRIPTION PAGE Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 234 4 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. STIREWALT & ASSOCIATES 13 A. Yes. 90:05:02 13 A. Yes. 90:05:03 14 Q. Whereabouts is it? 90:05:04 15 A. In front of me. 90:05:05 16 Q. All right. We'll take a look at that in a 90:05:05 17 minute. 90:05:06 17 minute. 90:05:06 18 You're familiar with the deposition process; 19 is that correct? 90:05:12 20 A. Yes. 90:05:12 21 Q. You've testified approximately 110 times in 90:05:12 21 the past four years; does that sound about right? 10 22 4 Q. Yes. 90:05:12 23 A. Four years? 11 SEXAMINATION INDEX 12 Q. Whereabouts is it? 90:05:05 16 Q. All right. We'll take a look at that in a 90:05:06 17 minute. 90:05:06 17 minute. 90:05:07 18 You're familiar with the deposition process; 12 Q. You've testified approximately 110 times in 90:05:12 21 Q. You've testified approximately 110 times in 90:05:12 22 the past four years; does that sound about right? 10 0:05:12 22 the past four years? 11 Q. You've testified approximately 110 times in 12 STIREWALT & ASSOCIATES	12	Ronald M. Huber, Videographer	09:05:00 12 Q. Did you bring your file with you today?
EXAMINATION INDEX Dr. Nemire Mr. Sieff BY SEXHIBIT INDEX Dr. Nemire BY SEXHIBIT INDEX Dr. Nemire BY SEXHIBIT INDEX DESCRIPTION DESCRIPTION DESCRIPTION DESCRIPTION PAGE Nemire To serve the serve that serve the serve that serve the serve that serve the past four years? BY STIREWALT & ASSOCIATES BY Whereabouts is it? DESCRIPTION DESCRIPTION PAGE O9:05:05 Dr. Nemire Dr. Nemire Dr. Nemire Nr. Sieff BY A. In front of me. O9:05:05 Dr. Nemire me. O9:05:05 Dr. Nemire Dr. All right. We'll take a look at that in a Description Dr. All right. We'll take a look at that in a Description De		, , ,	09:05:02 13 A. Yes.
Dr. Nemire Mr. Sieff 3 EXHIBIT INDEX BEXHIBIT DESCRIPTION PAGE Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 4 email, Hall to Kirkus, Kearney and 236 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 2 3 24 25 STIREWALT & ASSOCIATES Description PAGE No. 3			09:05:03 14 Q. Whereabouts is it?
EXHIBIT INDEX DESCRIPTION PAGE Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 234 4 email, Hall to Kirkus, Kearney and 236 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 Photo, 2 pgs. 23 STIREWALT & ASSOCIATES 19 STIREWALT & ASSOCIATES 19 All right. We'll take a look at that in a 19 9:05:08 17 minute. 19 9:05:08 18 You're familiar with the deposition process; 19 is that correct? 19 Q. You've testified approximately 110 times in 20 9:05:13 21 Q. You've testified approximately 110 times in 21 User Strates of A Four years; 22 User Strates of A Four years? 23 A. Four years? 24 Q. Yes. 25 STIREWALT & ASSOCIATES	14		09:05:04 15 A. In front of me.
EXHIBIT INDEX DESCRIPTION PAGE Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 234 4 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES	15		
Nemire 17 1 Kenneth Nemire, CV, Oct. 26, 2018, 3 Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN 19 A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 234 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 STIREWALT & ASSOCIATES Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN 19 A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 21 Q. You've testified approximately 110 times in 19 O9:05:19 21 Q. You've testified approximately 110 times in 19 O9:05:19 22 The past four years; does that sound about right? 19 O9:05:10 22 The past four years? 10 O9:05:10 25 A. No. STIREWALT & ASSOCIATES	16		-
Jan. 31, 2019, 7 pgs. 18 2 Nemire Report, HUMAN FACTORS 3 ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 20 3 Photo, 1 pg. 234 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 21 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 23 24 STIREWALT & ASSOCIATES 19 is that correct? 99.05:12 20 A. Yes. 99.05:12 21 Q. You've testified approximately 110 times in 99.05:12 22 A. Four years; does that sound about right? 10 99.05:12 23 A. Four years? 11 Q. Yes. 12 24 Q. Yes. 13 A. Four years? 14 A. Four years? 15 STIREWALT & ASSOCIATES		Nemire	
Nemire Report, HUMAN FACTORS ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. Photo, 1 pg. email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 23 24 STIREWALT & ASSOCIATES Nemire Report, HUMAN FACTORS ANALYSES OF A FALL AND DROWNING IN A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. 99:05:12 20 A. Yes. 99:05:12 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 21 Q. You've testified approximately 110 times in Photo, 1 pg. 99:05:13 A. Four years? Photo, 1 pg. 99:05:13 A. Four years? Photo, 1 pg. 99:05:13 A. No. STIREWALT & ASSOCIATES		Jan. 31, 2019, 7 pgs.	
A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH DAKOTA, 34 pgs. Photo, 1 pg. 234 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 23 24 5 STIREWALT & ASSOCIATES A RIVER AT FALLS PARK, SIOUX FALLS, SOUTH FALLS, SOUTH DAKOTA, 34 pgs. 23 24 09:05:19 21 Q. You've testified approximately 110 times in O9:05:19 22 the past four years; does that sound about right? 24 Q. Yes. 25 A. No. STIREWALT & ASSOCIATES	18		
Photo, 1 pg. 234 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 23 24 25 STIREWALT & ASSOCIATES Photo, 1 pg. 234 email, Hall to Kirkus, Kearney and 236 leonard, Aug. 26, 2018, with attached photo, 2 pgs. 24 Q. Yes. STIREWALT & ASSOCIATES	19	A RIVER AT FALLS PARK, SIOUX FALLS,	
4 email, Hall to Kirkus, Kearney and 236 Leonard, Aug. 26, 2018, with attached photo, 2 pgs. 22 23 24 25 STIREWALT & ASSOCIATES	20		
attached photo, 2 pgs. 22 23 24 25 STIREWALT & ASSOCIATES		4 email, Hall to Kirkus, Kearney and 236	
22 23 24 25 STIREWALT & ASSOCIATES 09:05:20	21		-
24 25 STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES	1 22		09:05:20 24 Q. Yes.
STIREWALT & ASSOCIATES			
	23 24		
	23 24	STIREWALT & ASSOCIATES	

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09:22:44	that there is can be common sense, so-called	09:26:06 1	not correct or suspect in some way.
09:22:47 2	common-sense knowledge that is inaccurate for any	09:26:11 2	Q. Are you able to identify each and every
09:22:52 3	number of reasons.	09:26:14 3	decision with respect to the credibility of witness
09:22:54 4	Q. Is it your testimony that a human factors	09:26:18 4	testimony in this case that you have made?
09:22:57 5	expert has greater expertise in common sense than a	09:26:22 5	A. I'm sorry. Ask the question again.
09:23:01 6	juror in Sioux Falls, South Dakota?	09:26:23	Q. Are you able to tell us each piece of
09:23:07	A. Common sense has a number of different	09:26:26 7	witness testimony that you have judged to either be
09:23:10	definitions. Common sense can be correct, it can be	09:26:30	credible or, more importantly, not credible?
09:23:16	not correct, and there are some issues that might be	09:26:34	A. We would have to walk through every
09:23:22 10	considered common sensical, but in fact the common	09:26:36 10	statement made and all the transcripts and all the
09:23:31 11	sense understanding of an issue is is incorrect,	09:26:40 11	statements to the police.
09:23:35 12	according to scientific evidence.	09:26:41 12	Q. So you've
09:23:39 13	Q. You testified that your purpose here today	09:26:42 13	Is it fair to say that you have made
09:23:41 14	is to educate the jury regarding human factors issues	09:26:45 14	determinations as to the credibility of witness
09:23:44 15	present in this case. In doing so, would you agree	09:26:48 15	statements in this case in more than one instance?
09:23:48 16	that it's necessary and vital for you to respect the	09:26:53 16	A. Yes.
09:23:52 17	role of the Court in these proceedings; the judge?	09:26:54 17	Q. More than two instances?
09:23:58 18	A. Yes.	09:26:56 18	A. Yes.
09:24:00 19	Q. Would you agree that as part of your purpose	09:26:57 19	Q. Many, many instances.
09:24:05 20	in educating the jury regarding human factors issues	09:26:59 20	A. Most likely.
09:24:08 21	present in this case that it's important, if not	09:27:00 21	Q. You have determined the credibility of a
09:24:12 22	vital, that you respect the role of the jurors in this	09:27:03 22	witness testimony in this case based upon written
09:24:15 23	case?	09:27:09 23	documentation; namely, the transcripts. Correct?
09:24:16 24	A. Yes.	09:27:12 24	A. Well you used the word I just picked up
09:24:22 25	Q. And respect the role that the law itself may	09:27:15 25	on the word "determined." I've evaluated the
	STIREWALT & ASSOCIATES		STIREWALT & ASSOCIATES
	1-800-553-1953 info@stirewalt.com		1-800-553-1953 info@stirewalt.com
	40		
	18		20
09:24:24 1	play in this case.	09:27:19 1	credibility based on statements to the police and in
09:24:24 1 09:24:25 2		09:27:19 1 09:27:23 2	
_	play in this case.	_	credibility based on statements to the police and in
09:24:25 2	play in this case. A. Yes.	09:27:23 2	credibility based on statements to the police and in deposition transcripts. I can't determine the
09:24:25 2 09:24:38 3	play in this case. A. Yes. Q. You have written a detailed report regarding	09:27:23 2 09:27:27 3	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after
09:24:25 2 09:24:38 3 09:24:42 4	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true?	09:27:23 2 09:27:27 3 09:27:31 4	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact.
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes.	09:27:23 2 09:27:27 3 09:27:31 4 09:27:32 5	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:48 6	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some	09:27:23 2 09:27:27 3 09:27:31 4 09:27:32 5 09:27:36 6	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:48 6 09:24:51 7 09:24:55 8 09:25:00 9	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some detail, but before we do that I have one question for	09:27:23 2 09:27:27 3 09:27:31 4 09:27:32 5 09:27:36 6 09:27:40 7 09:27:43 8 09:27:48 9	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as to whether or not any particular piece of testimony or
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:48 6 09:24:51 7 09:24:55 8 09:25:00 9 09:25:02 10	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some detail, but before we do that I have one question for you. In arriving at your opinions did you make any	09:27:23 2 09:27:27 3 09:27:31 4 09:27:32 5 09:27:36 6 09:27:40 7 09:27:43 8 09:27:48 9 09:27:50 10	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as to whether or not any particular piece of testimony or evidence offered by a witness was or was not credible? A. I would have to take case by case. Q. The answer is either "yes" or "no." Either
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:48 6 09:24:51 7 09:24:55 8 09:25:00 9 09:25:02 10 09:25:08 11	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some detail, but before we do that I have one question for you. In arriving at your opinions did you make any judgements as to the credibility of any of the evidence that you reviewed? A. Yes.	09:27:23 2 09:27:27 3 09:27:31 4 09:27:32 5 09:27:36 6 09:27:40 7 09:27:43 8 09:27:48 9 09:27:50 10 09:27:51 11	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as to whether or not any particular piece of testimony or evidence offered by a witness was or was not credible? A. I would have to take case by case. Q. The answer is either "yes" or "no." Either you made judgements as to the credibility of witness
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:48 6 09:24:51 7 09:24:55 8 09:25:00 9 09:25:02 10 09:25:08 11 09:25:09 12	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some detail, but before we do that I have one question for you. In arriving at your opinions did you make any judgements as to the credibility of any of the evidence that you reviewed? A. Yes. Q. Tell me, which ones?	09:27:23 2 09:27:27 3 09:27:31 4 09:27:32 5 09:27:36 6 09:27:40 7 09:27:43 8 09:27:48 9 09:27:50 10 09:27:51 11 09:27:54 12	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as to whether or not any particular piece of testimony or evidence offered by a witness was or was not credible? A. I would have to take case by case. Q. The answer is either "yes" or "no." Either you made judgements as to the credibility of witness testimony, or you did not.
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:51 7 09:24:55 8 09:25:00 9 09:25:02 10 09:25:08 11 09:25:09 12 09:25:12 13	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some detail, but before we do that I have one question for you. In arriving at your opinions did you make any judgements as to the credibility of any of the evidence that you reviewed? A. Yes. Q. Tell me, which ones? A. I evaluate all the pieces of evidence that	09:27:23 2 09:27:27 3 09:27:31 4 09:27:32 5 09:27:36 6 09:27:40 7 09:27:48 9 09:27:50 10 09:27:51 11 09:27:54 12 09:27:57 13	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as to whether or not any particular piece of testimony or evidence offered by a witness was or was not credible? A. I would have to take case by case. Q. The answer is either "yes" or "no." Either you made judgements as to the credibility of witness testimony, or you did not. A. I have weighed evidence more strongly than
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:51 7 09:24:55 8 09:25:00 9 09:25:02 10 09:25:08 11 09:25:09 12 09:25:12 13 09:25:16 14	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some detail, but before we do that I have one question for you. In arriving at your opinions did you make any judgements as to the credibility of any of the evidence that you reviewed? A. Yes. Q. Tell me, which ones? A. I evaluate all the pieces of evidence that come before me to evaluate which would be would be	09:27:23	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as to whether or not any particular piece of testimony or evidence offered by a witness was or was not credible? A. I would have to take case by case. Q. The answer is either "yes" or "no." Either you made judgements as to the credibility of witness testimony, or you did not. A. I have weighed evidence more strongly than others.
09:24:25 2 09:24:38 3 09:24:42 4 09:24:47 5 09:24:48 6 09:24:51 7 09:24:55 8 09:25:00 9 09:25:02 10 09:25:08 11 09:25:09 12 09:25:12 13 09:25:16 14 09:25:24 15	play in this case. A. Yes. Q. You have written a detailed report regarding your findings in this case and your opinions; true? A. Yes. Q. And we will get to that in a moment in some detail, but before we do that I have one question for you. In arriving at your opinions did you make any judgements as to the credibility of any of the evidence that you reviewed? A. Yes. Q. Tell me, which ones? A. I evaluate all the pieces of evidence that come before me to evaluate which would be would be useful in me understanding how an incident occurred	09:27:23	credibility based on statements to the police and in deposition transcripts. I can't determine the credibility because there's no way to do that after the fact. Q. In evaluating the credibility of a witness in this case, did you make any subsequent judgment as to whether or not any particular piece of testimony or evidence offered by a witness was or was not credible? A. I would have to take case by case. Q. The answer is either "yes" or "no." Either you made judgements as to the credibility of witness testimony, or you did not. A. I have weighed evidence more strongly than others. Q. You have weighed evidence more strongly than
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	Case 4:18-cv-04088-KES Documept 26-	2 Filed 10/01/19 Page 3 of 22 PageID #: 222 23
09:28:44 1	want to discuss, and we can discuss each of those	09:31:05 1 A. I don't know how many.
09:28:47	point by point if you like.	09:31:06 2 Q. And as well as all the depositions in this
09:28:49 3	Q. What I'm	09:31:09 3 giant notebook here; right?
09:28:50 4	A. But a blanket statement I cannot make.	09:31:11 4 A. I don't know what's in your notebook.
09:28:52 5	Q. You've testified that you have reviewed	09:31:13 5 Q. Well it's all the deposition exhibits.
09:28:54	witness testimony vis-à-vis the transcripts, and you	09:31:15 6 A. I have reviewed the depositions that are
09:28:59 7	have weighed evidence and considered some evidence	09:31:18 7 listed in my report.
09:29:03	more strongly than other evidence. True?	09:31:19 8 Q. Did you review the deposition exhibits?
09:29:07	A. Yes.	09:31:21 9 A. Yes.
09:29:08 10	Q . In other words, you have given more	09:31:21 10 Q. Okay. And you had an opportunity, as you've
09:29:11 11	credibility to some pieces of evidence than other	09:31:26 11 testified, to get ready for this deposition today.
09:29:13 12	pieces of evidence; true?	09:31:28 12 A. Yes.
09:29:19 13	A. I would not agree with the with the term	09:31:28 13 Q. "Yes"?
09:29:22 14	"credibility." I would say that that I've I've	09:31:29 14 So my question to you, sir, is again, tell
09:29:29 15	assigned weight to some pieces of information that	09:31:34 15 me which individual in this the case, of all the
09:29:35 16	have come before me more than other pieces of	09:31:39 16 people who were involved and have been deposed, you
09:29:38 17	information. That doesn't mean that necessarily	09:31:43 17 believe has a false memory.
09:29:46 18	that one piece of information is more credible. It	09:31:45 18 A. Again we'll have to go case by case. If you
09:29:51 19	could be that someone has a false memory of what ha	
09:29:58 20	occurred, so for them it's quite credible, even though	09:31:53 20 examine the support for my opinions and some of that
09:30:01 21	it's a false memory.	09:31:58 21 support has to do with the statements made or
09:30:04 22	Q. Who in this case do you believe has a false	09:32:03 22 statements omitted in supporting my opinions, then I'm
09:30:06 23	memory?	09:32:07 23 happy to do that. But a blanket statement I think
09:30:07 24	A. We'd have to go case by case.	09:32:09 24 is I don't I'm not willing to entertain.
09:30:09 25	Q. Do you believe any person in this case has a	09:32:15 25 Q. So when you say you do believe some people
	STIREWALT & ASSOCIATES	STIREWALT & ASSOCIATES
	1-800-553-1953 info@stirewalt.com	1-800-553-1953 info@stirewalt.com
	22	24
09:30:11	-	09:32:18 1 in this case have evidenced false memory, you're
09:30:11 1 09:30:15 2	22	
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	Case 4:18-cv-04088-KES Document 26-2	Filed 10	0/01/19 Page 4 of 22 PageID #: 223 ₃₅
09:44:14 1	A. Okay.	09:47:49 1	possibilities, but it's not possible to determine
09:44:14 2	Q. And you list a number of specialties.	09:47:51 2	which of those two occurred.
09:44:16 3	A. Yes.	09:47:53	MR. SIEFF: I will move to strike that
09:44:17	Q. Okay. Human factors/ergonomics; human	09:47:54 4	answer as nonresponsive.
09:44:21 5	performance/information processing; lighting,	09:47:56 5	I will repose the question. And Debby, if
09:44:25	visibility, conspicuity; driver and pedestrian	09:47:59 6	you would be so kind as to read it to Dr. Nemire.
09:44:29 7	perception and behavior; perception-response time;	09:48:02 7	(Record read by the reporter from
09:44:32	visual-motor coordination; slip, trip, misstep, falls;	09:48:27	Page 34, Lines 15 to 19.)
09:44:37	product design, liability (including medical,	09:48:27	A. Again, no. It's not possible to determine
09:44:40 10	consumer, construction products); warnings, signs,	09:48:32 10	if it's more likely or not that she tripped, and it's
09:44:44 11	interactions; human-machine interaction;	09:48:34 11	not lik it's not possible to determine that it's
09:44:47 12	control/display layout; and safety.	09:48:38 12	most likely or not that she took an air step.
09:44:51 13	You claim expertise in all of those areas;	09:48:41 13	Q. You had an opportunity to review your report
09:44:53 14	is that correct?	09:48:44 14	that you authored before coming in here today?
09:44:54 15	A. Yes.	09:48:46 15	A. Yes.
09:45:05 16	Q. In the past you've worked, according to your	09:48:47 16	Q. And in fact you did review it?
09:45:24 17	CV, on cases involving falls, warnings, workplace	09:48:49 17	A. Yes.
09:45:31 18	incidents, products liability, vehicle incidents and	09:48:50 18	Q. And in your report you state that all of
09:45:34 19	human-machine interaction.	09:48:52 19	your opinions or conclusions are final to a reasonable
09:45:35 20	Are there any broad categories of cases that	09:48:56 20	degree of scientific certainty.
09:45:38 21	you've worked on that you feel relevant to tell us	09:48:59 21	A. Yes.
09:45:41 22	about today that would be germane to to this case?	09:49:00 22	Q. Those are your words.
09:45:48 23	A. I have had cases that's similar; children	09:49:01 23	A. Later on it says I have the reserve the
09:45:58 24	falling down utility holes, you know, that still falls	09:49:03 24	right to amend my opinions, you know, should other
09:46:07 25	under falls under the category of trip, slip and	09:49:08 25	information come forward.
	STIREWALT & ASSOCIATES		STIREWALT & ASSOCIATES
	1-800-553-1953 info@stirewalt.com		1-800-553-1953 info@stirewalt.com
	34		36
09:46:16 1	falls, but those are the broad categories of cases.	09:49:11 1	Q. All right. I'll ask you this broad
09:46:16 1 09:46:18 2		09:49:11 1 09:49:14 2	
_	falls, but those are the broad categories of cases.	_	Q. All right. I'll ask you this broad
09:46:18 2	falls, but those are the broad categories of cases. Q. Just so the jury is clear, you're not	09:49:14 2 09:49:14 3 09:49:16 4	Q. All right. I'll ask you this broad question: Are Have any of the opinions that you've expressed in your report been amended, or do you
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	Case 4:18-cv-04088-KES Document 26-2		4 42
09:56:14	right?		40
0	A. Yes.	• • • • • • • • • • • • • • • • • • • •	
09:56:16 2 09:56:17 3	Q. So out of these 22 or so that you have done	background in the sciences, you can't both be consisted. at the same time. So my question to you, sir, is	
09:56:21 4	in the last five years, how many times were you	19:59:32 4 this:	•
09:56:27 5	were your opinions right? Do you know?	ps.59.33 5 Is there a known and scientifically acc	rented
09:56:35	A. It's It	90:59:38 6 method for quantifying or determining the error	-
09:56:37	We typically can't know whether an opinion	7 of a litigation forensic human factors expert's	146
09:56:39	is right or not, just have to go with the research and	90:59:47 8 opinions in the litigation context?	
09:56:46	evaluate the evidence and indicate, you know, whether	9 A. I think the issue here in comparin	a Ms.
09:56:53 10	something most likely or not occurred.	ps.59.54 10 Gill's opinions with mine is that I use scient	_
09:56:56 11	Q. Sure.	ps.59.58 11 research to support my opinions and she do	
09:56:57 12	In other words, there's no way to quantify,	10:00:04 12 Q. That we'll talk about.	
09:57:02 13	in real terms, whether your opinion is right or wrong.	Is there a way to quantify an error rai	te as
09:57:06 14	A. Well I always base my opinions on scientific	10:00:09 14 to the opinions you've expressed in prior cases of	or
09:57:08 15	research. Scientific research is typically, you know,	10:00:12 15 not?	
09:57:15 16	accurate, as I said, within five percent. Some	0:00:14 16 A. Well opinions in a prior case, ther	e as
09:57:20 17	research, such as warnings, indicates that people, you	10:00:20 17 in this case, there are many different opinion	ons. So,
09:57:25 18	know, pay attention to warnings, say, 60 percent of	you know, if I have ten opinions in this case	e, one of
09:57:27 19	the time or 90 percent of the time, which would	10:00:28 19 them may not be accurate based on actual	events. That
09:57:31 20	indicate maybe there's 10 percent of the time people	would still indicate that overall, you know,	my
09:57:33 21	are not paying attention to warnings. So if I believe	0,000:40 21 opinions in this case were accurate and has	a low
09:57:36 22	that a warning is sufficient and adequate to encourage	10:00:45 22 error rate.	
09:57:44 23	someone to notice, read, understand and follow that	You'd have to do a similar analyse	es across
09:57:47 24	warning, it's 90 percent of the people might follow	all the cases and all of Ms. Gill's cases, but	there's
09:57:53 25	that warning, but but there is always that 10	no way of knowing what actually happened	unless there
	STIREWALT & ASSOCIATES	STIREWALT & ASSOCIATES	
	1-800-553-1953 info@stirewalt.com	1-800-553-1953 info@stirewalt.com	
4	42	4. In relation and there are	44
09:57:56 1	percent that may not notice it for whatever reason, or	1 is video evidence.	44
09:58:00 2	percent that may not notice it for whatever reason, or decide not to follow it.	Q. In this particular case, sir, you have	
09:58:00 2 09:58:03 3	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has	Q. In this particular case, sir, you have rendered opinions that have may have import	
09:58:00 2 09:58:03 3 09:58:08 4	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true?	
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes.	ant
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Q. They may have financial consequence	ant
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong?	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Q. They may have financial consequence opinion: A. Yes.	ant s.
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be	Q. In this particular case, sir, you have reconstructed a rendered opinions that have may have import consequences; true? A. Yes. Cool:12 6 Q. They may have financial consequence A. Yes. Cool:16 7 A. Yes. Cool:16 8 Q. They may have deep and serious emore a reconstructed as a rendered opinions.	ant s. otional and
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that. Q. There's no way to quantify an error rate for	Q. In this particular case, sir, you have reconstructed a rendered opinions that have may have imported to consequences; true? A. Yes. Co.01:12 6 Q. They may have financial consequence A. Yes. Co.01:16 7 A. Yes. Co.01:16 7 A. Yes.	ant s. otional and
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8 09:58:26 9	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that.	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Consequences: They may have financial consequences opinions. A. Yes. Consequences: They may have financial consequences. Consequences: They may have deep and serious emonomical opinions. A. Yes. Consequences: They may have deep and serious emonomical opinions. Consequences: They may have deep and serious emonomical opinions.	ant s. otional and rue?
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8 09:58:26 9 09:58:29 10	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that. Q. There's no way to quantify an error rate for your opinions; true?	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Q. They may have financial consequence opinions that have may have import consequences; true? A. Yes. Q. They may have financial consequence opinion: A. Yes. Q. They may have deep and serious emore properties of the properties opinion: Q. They may have deep and serious emore properties opinion: Q. They may have deep and serious emore properties opinion: Q. They may have deep and serious emore properties opinion: Q. They may have deep and serious emore properties opinion: Q. They may have deep and serious emore properties opinion: Q. They may have deep and serious emore properties opinions.	ant s. otional and rue? your
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09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8 09:58:26 9 09:58:29 10 09:58:31 11 09:58:31 12 09:58:37 13 09:58:43 14	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that. Q. There's no way to quantify an error rate for your opinions; true? A. Well as I said, I base my opinions on scientific research and so it's more likely than not that my opinions are correct, but there's always the possibility that one of those opinions is not correct	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. D. They may have financial consequence opinions A. Yes. D. They may have deep and serious emore deep and ser	ant s. otional and rue? your
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09:58:00 2 09:58:03 3 09:58:03 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8 09:58:26 9 09:58:29 10 09:58:31 11 09:58:31 11 09:58:37 13 09:58:47 15 09:58:52 16 09:58:52 16 09:58:52 17 09:58:58 18 09:59:02 19 09:59:03 20 09:59:06 22 09:59:09 23	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that. Q. There's no way to quantify an error rate for your opinions; true? A. Well as I said, I base my opinions on scientific research and so it's more likely than not that my opinions are correct, but there's always the possibility that one of those opinions is not correct just because of the nature of statistics and human behavior. Q. Well, sir, you have opinions in this case that you claim are more likely than not correct; true? A. Yes. Q. Dr. Gill has opinions in this case A. Ms. Gill. Q. Ms. Gill. Apologize in this case which she believes are more	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. 10:01:12	ant s. stional and rue? your nat f
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8 09:58:26 9 09:58:29 10 09:58:31 11 09:58:31 11 09:58:31 12 09:58:37 13 09:58:43 14 09:58:47 15 09:58:52 16 09:58:53 17 09:58:58 18 09:59:02 19 09:59:03 20 09:59:05 21 09:59:06 22 09:59:09 23 09:59:12 24	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that. Q. There's no way to quantify an error rate for your opinions; true? A. Well as I said, I base my opinions on scientific research and so it's more likely than not that my opinions are correct, but there's always the possibility that one of those opinions is not correct just because of the nature of statistics and human behavior. Q. Well, sir, you have opinions in this case that you claim are more likely than not correct; true? A. Yes. Q. Dr. Gill has opinions in this case A. Ms. Gill. Q. Ms. Gill. Apologize in this case which she believes are more likely than not correct; true?	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Q. They may have financial consequence opinions. Q. They may have deep and serious emore lasting psychological consequences for people; to A. Yes. Q. And it's your testimony that some of your solutions. Q. And it's always the possibility, Q. Right. A. That's always the possibility, Q. Right. A just as with Ms. Gill's opinions. Q. And you understand that this is a very serious matter we're dealing with here. A. Yes. Q. And everything you have done up till according to your testimony, is based on applying concepts of forensic human factors techniques a application of scientific methods and techniques investigation; is that right?	ant s. stional and rue? your nat now, ng the nd the to an
09:58:00 2 09:58:03 3 09:58:03 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8 09:58:26 9 09:58:29 10 09:58:31 11 09:58:31 11 09:58:37 13 09:58:47 15 09:58:52 16 09:58:52 16 09:58:52 17 09:58:58 18 09:59:02 19 09:59:03 20 09:59:06 22 09:59:09 23	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that. Q. There's no way to quantify an error rate for your opinions; true? A. Well as I said, I base my opinions on scientific research and so it's more likely than not that my opinions are correct, but there's always the possibility that one of those opinions is not correct just because of the nature of statistics and human behavior. Q. Well, sir, you have opinions in this case that you claim are more likely than not correct; true? A. Yes. Q. Dr. Gill has opinions in this case A. Ms. Gill. Q. Ms. Gill. Apologize in this case which she believes are more likely than not correct; true? A. That's what she says, yes.	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Q. They may have financial consequence opinions. Q. They may have deep and serious emore lasting psychological consequences for people; to A. Yes. Q. And it's your testimony that some of your last opinions may not be right and others may. Is the true? A. That's always the possibility, Q. Right. A just as with Ms. Gill's opinions. Q. And you understand that this is a very serious matter we're dealing with here. A. Yes. Q. And everything you have done up till according to your testimony, is based on applying concepts of forensic human factors techniques a application of scientific methods and techniques investigation; is that right? A. And relying on research that has to the content opinion of the property opinion opinio	ant s. stional and rue? your nat now, ng the nd the to an
09:58:00 2 09:58:03 3 09:58:08 4 09:58:11 5 09:58:14 6 09:58:18 7 09:58:23 8 09:58:26 9 09:58:29 10 09:58:31 11 09:58:31 11 09:58:31 12 09:58:37 13 09:58:43 14 09:58:47 15 09:58:52 16 09:58:53 17 09:58:58 18 09:59:02 19 09:59:03 20 09:59:05 21 09:59:06 22 09:59:09 23 09:59:12 24	percent that may not notice it for whatever reason, or decide not to follow it. Q. Do Do you know if there has Have you ever done an analysis looking backwards as to whether or not the opinions you have rendered in prior cases have been proven to be accurate and correct, or wrong? A. Yeah, there's no way of knowing that. Q. There's no way to quantify an error rate for your opinions; true? A. Well as I said, I base my opinions on scientific research and so it's more likely than not that my opinions are correct, but there's always the possibility that one of those opinions is not correct just because of the nature of statistics and human behavior. Q. Well, sir, you have opinions in this case that you claim are more likely than not correct; true? A. Yes. Q. Dr. Gill has opinions in this case A. Ms. Gill. Q. Ms. Gill. Apologize in this case which she believes are more likely than not correct; true?	Q. In this particular case, sir, you have rendered opinions that have may have import consequences; true? A. Yes. Q. They may have financial consequence opinions. Q. They may have deep and serious emore lasting psychological consequences for people; to A. Yes. Q. And it's your testimony that some of your solutions. Q. And it's always the possibility, Q. Right. A. That's always the possibility, Q. Right. A just as with Ms. Gill's opinions. Q. And you understand that this is a very serious matter we're dealing with here. A. Yes. Q. And everything you have done up till according to your testimony, is based on applying concepts of forensic human factors techniques a application of scientific methods and techniques investigation; is that right?	ant s. stional and rue? your nat now, ng the nd the to an

	Case 4:18-cv-04088-KES Document, 26-2	ı ⊑ilod 1	0/01/19 Page 6 of 22 PageID #: 225 123
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12:38:12	appear to be a causal factor," is rele is as	12:40:39	foam did not appear to be a causal factor in most of
12:38:17 2	related to the description provided by the newspaper.	12:40:43	the drowning and rescue incidents.
12:38:20	Q. Well what you wrote exactly was: "The	12:40:45	A. Yes. And as I said, this is this is not
12:38:23 4	presence of foam did not appear to be a causal factor	12:40:47	intended to be a thorough analysis, but this is the
12:38:26 5	in most of the drowning and rescue incidents."	12:40:53 5	data that is available to me at the time and is more
12:38:30 6	A. As described by the newspaper.	12:40:58 6	thorough and complete than any analyses that Ms. Gill
12:38:32 7	Q. Okay. When you say "in most of the drowning	12:41:02 7	appeared to have conducted.
12:38:34	and rescue incidents," what you're really saying is in	12:41:03	Q. Is it intended to be something you relied
12:38:38	none of the drowning and rescue incidents; is that	12:41:05	upon in reaching your opinions in this case?
12:38:41 10	correct?	12:41:08 10	A. I'm sorry, which is?
12:38:41 11	A. Well as I said, as described by the	12:41:09 11	Q. Is this analyses you conducted, which you
12:38:43 12	newspaper. The newspaper only talks about foam as	12:41:12 12	acknowledge is not thorough, something that you relied
12:38:46 13	somehow being related to a fall.	12:41:15 13	upon in reaching your opinions in this case?
12:38:46 14	Q . But	12:41:18 14	A. Yes.
12:38:50 15	A. So in the newspaper accounts there is one	12:41:19 15	Q. Is it something that you would expect the
12:38:52 16	out of the 42. So saying that and foam might be	12:41:21 16	jury to rely upon in reaching their decision about
12:38:59 17	considered a causal factor in that 2013 incident as	12:41:24 17	this case?
12:39:02 18	described in the newspaper. So there's still one out	12:41:27 18	A. I think I have said before, I'm I'm I
12:39:06 19	of the 42 that seems to be somehow related to foam.	12:41:35 19	am presenting information from a human factors
12:39:11 20	So then the presence of foam did not appear to be a	12:41:38 20	perspective to the jury. What they do with that is
12:39:13 21	causal factor in most of the drowning and rescue	12:41:44 21	is up to them, so I have no expectation one or the
12:39:16 22	incidents is correct, because 41 out of the 42 did not	12:41:47 22	other. I present the information as best I can.
12:39:20 23	appear to be related to foam. Forty-one out of 42	12:41:50 23	Q. And based upon your less this
12:39:24 24	would clearly be most	12:41:52 24	less-than-thorough analyses you conducted, you did
12:39:25 25	Q. Okay.	12:41:55 25	conclude that the presence of foam appeared to be a
	STIREWALT & ASSOCIATES		STIREWALT & ASSOCIATES
	1-800-553-1953 info@stirewalt.com		1-800-553-1953 info@stirewalt.com
			404
	122		124
12:39:26 1	A and not all.	12:41:58 1	causal factor in at least one drowning and rescue
12:39:27 2	A and not all.Q. In par	12:42:01 2	causal factor in at least one drowning and rescue incident; true?
12:39:27 2 12:39:28 3	A and not all.Q. In parIn the first paragraph of Section 7 you	12:42:01 2 12:42:02 3	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports.
12:39:27 2 12:39:28 3 12:39:30 4	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous 	12:42:01 2 12:42:02 3 12:42:04 4	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from
12:39:27 2 12:39:28 3 12:39:30 4 12:39:37 5	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case 	12:42:01 2 12:42:02 3 12:42:04 4 12:42:07 5	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct?
12:39:27 2 12:39:28 3 12:39:30 4 12:39:37 5 12:39:39 6	A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right?	12:42:01 2 12:42:02 3 12:42:04 4 12:42:07 5 12:42:09 6	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes.
12:39:27 2 12:39:28 3 12:39:30 4 12:39:37 5 12:39:39 6 12:39:43 7	 A and not all. Q. In par	12:42:01 2 12:42:02 3 12:42:04 4 12:42:07 5 12:42:09 6 12:42:10 7	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in
12:39:27 2 12:39:28 3 12:39:30 4 12:39:37 5 12:39:43 7 12:39:44 8	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right? A. Yes. Q. And you utilized a newspaper report from the 	12:42:01 2 12:42:02 3 12:42:04 4 12:42:07 5 12:42:09 6 12:42:10 7 12:42:18 8	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal
12:39:27 2 12:39:28 3 12:39:30 4 12:39:37 5 12:39:39 6 12:39:43 7 12:39:44 8 12:39:50 9	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right? A. Yes. Q. And you utilized a newspaper report from the Sioux Falls Argus; correct? 	12:42:01 2 12:42:02 3 12:42:04 4 12:42:07 5 12:42:09 6 12:42:10 7 12:42:18 8 12:42:22 9	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013;
12:39:27	 A and not all. Q. In par	12:42:01 2 12:42:02 3 12:42:04 4 12:42:07 5 12:42:09 6 12:42:10 7 12:42:18 8 12:42:22 9 12:42:25 10	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013; correct?
12:39:27	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right? A. Yes. Q. And you utilized a newspaper report from the Sioux Falls Argus; correct? A. I think it's called the Argus Leader, but yes. 	12:42:01	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013; correct? A. Yes.
12:39:27	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right? A. Yes. Q. And you utilized a newspaper report from the Sioux Falls Argus; correct? A. I think it's called the Argus Leader, but yes. Q. Okay. And you considered utilizing the 	12:42:01 2 12:42:02 3 12:42:04 4 12:42:07 5 12:42:09 6 12:42:10 7 12:42:18 8 12:42:22 9 12:42:25 10	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013; correct? A. Yes. Q. Which we've already discussed as having
12:39:27	 A and not all. Q. In par	12:42:01	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013; correct? A. Yes. Q. Which we've already discussed as having occurred in approximately the same area as where
12:39:27	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right? A. Yes. Q. And you utilized a newspaper report from the Sioux Falls Argus; correct? A. I think it's called the Argus Leader, but yes. Q. Okay. And you considered utilizing the Argus Leader to conduct a hazard analysis to be scientifically valid, is that correct, for a hazard 	12:42:01	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013; correct? A. Yes. Q. Which we've already discussed as having occurred in approximately the same area as where Maggie Zaiger went into the water; correct?
12:39:27	 A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right? A. Yes. Q. And you utilized a newspaper report from the Sioux Falls Argus; correct? A. I think it's called the Argus Leader, but yes. Q. Okay. And you considered utilizing the Argus Leader to conduct a hazard analysis to be scientifically valid, is that correct, for a hazard analysis? 	12:42:01	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013; correct? A. Yes. Q. Which we've already discussed as having occurred in approximately the same area as where Maggie Zaiger went into the water; correct? A. That's my understanding.
12:39:27	A and not all. Q. In par In the first paragraph of Section 7 you conducted an analyses of the reports of previous accidents and near-miss accidents, in this case drownings or near drownings; right? A. Yes. Q. And you utilized a newspaper report from the Sioux Falls Argus; correct? A. I think it's called the Argus Leader, but yes. Q. Okay. And you considered utilizing the Argus Leader to conduct a hazard analysis to be scientifically valid, is that correct, for a hazard analysis? A. Yes. It's the same way that other	12:42:01	causal factor in at least one drowning and rescue incident; true? A. According to the newspaper reports. Q. According to the newspaper reports from which you conducted your analysis; correct? A. Yes. Q. All right. And the one drowning incident in which the presence of foam appeared to be a causal factor was the incident that occurred in 2013; correct? A. Yes. Q. Which we've already discussed as having occurred in approximately the same area as where Maggie Zaiger went into the water; correct? A. That's my understanding.
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12:48:28 1	Q. You are aware that our claim is related to	12:50:59 1 Leader has reported?
12:48:31 2	the buildup of foam in Falls Park; yes?	12:51:00 2 A. I did not.
12:48:34 3	A. Yes.	12:51:01 3 Q. Do you hold an opinion as to whether or not
12:48:35 4	Q. Okay. So I just want to make sure I	12:51:04 4 the presence of foam was or was not a causal factor in
12:48:37 5	understand something. You have conducted an analysis	12:51:08 5 the 2013 drowning incident?
12:48:42 6	of 42 incidents based upon what the Argus Leader has	12:51:11 6 A. Yeah. Again, I have not done that analyses
12:48:45 7	reported, but you have not conducted any further	12:51:13 7 for the 2013 incident.
12:48:48 8	analysis into drownings or near drownings occurring at	12:51:15 8 Q. So the answer is no.
12:48:53	Falls Park in February or March where foam is alleged	12:51:16 9 A. Yes.
12:48:58 10	to have been present or a contributing factor; is that	12:51:17 10 Q. If the presence of foam was found to be a
12:49:01 11	right?	12:51:28 11 causal factor in the 2013 drowning incident, do you
12:49:03 12	A. That's right.	12:51:33 12 hold the opinion or would you hold the opinion that
12:49:04 13	Q . Okay.	12:51:37 13 efforts should have been undertaken to address that
12:49:04 14	A. I'm not aware of any information to that	12:51:40 14 hazard?
12:49:07 15	effect beyond what I described in my report.	12:51:41 15 MR. MOORE: Object to form and foundation.
12:49:09 16	Q. Did you ask for that information?	12:51:43 16 A. My understanding of city staff and and
12:49:10 17	A. I have not.	12:51:48 17 risk management efforts they undertook is they might
12:49:11 18	Q. All right. And you do agree that the	12:51:52 18 have looked at foam, but did not consider it a hazard,
12:49:14 19	presence of foam appeared to be a causal factor in the	12:51:55 19 and therefore they did not take any or make any
12:49:17 20	2013 drownings.	12:52:00 20 efforts to address hazard of the foam in terms of
12:49:21 21	A. Well	12:52:03 21 trying to mitigate that hazard.
12:49:23 22	Q. Isn't that what your report indicates?	12:52:05 22 Q. Right. I want to
12:49:26 23	A. Again, this statement has to do with factors	12:52:06 23 A. So based on their analyses, then I would
12:49:33 24	identified by the newspaper as somehow related to this	
12:49:36 25	incident	12:52:11 25 hazard after the 2013 incident and before the 2018
	STIREWALT & ASSOCIATES 1-800-553-1953 info@stirewalt.com	STIREWALT & ASSOCIATES 1-800-553-1953 info@stirewalt.com
	1-000-000-1000 info@stirewatt.com	1-000-000-1000 info@stifewalt.com
	130	132
12:49:37	130 Q. Well	132 1 _{12:52:16} 1 incident.
12:49:37 1 12:49:37 2		4
_	Q. Well	12:52:16 1 incident.
12:49:37 2	Q. WellA as and that is what I am reporting	12:52:16 1 incident. 12:52:17 2 MR. SIEFF: Move to strike.
12:49:37 2 12:49:41 3	Q. WellA as and that is what I am reporting here. So this is a description of hazards according	12:52:16 1 incident. 12:52:17 2 MR. SIEFF: Move to strike. 12:52:20 3 Q. You are a human factors engineer, and also
12:49:37 2 12:49:41 3 12:49:47 4	Q. Well A as and that is what I am reporting here. So this is a description of hazards according to analyses of 42 injury and fatal incidents. That's	12:52:16 1 incident. 12:52:17 2 MR. SIEFF: Move to strike. 12:52:20 3 Q. You are a human factors engineer, and also are certified in safety matters; yes?
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12:49:37	 Q. Well A as and that is what I am reporting here. So this is a description of hazards according to analyses of 42 injury and fatal incidents. That's This is the only database that I know about, so I finish with describing, you know, foam is only mentioned in one. I don't know that I don't recall that the event description said foam is a causal factor, it was just something that seems to be related. Q. You had the benefit of all of the law enforcement reports related to the 2013 incidents A. Yes. Q incident; correct? And it's true that foam is repeatedly mentioned as a factor in not only the drowning, but the rescue efforts. Isn't that true? A. No. My recollection is Q. All right. A they mention foam as impeding rescue 	12:52:16 1 incident. 12:52:17 2
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	Case	4:18-cv-04088-KES Documeդֈ-26-2	Filed	10	/01/19	Page 8 of 22 PageID #: 227 139
12:59:38 1		The information I have seen right now does	13:02:38	1	A.	(Witness reviewing documents.) Well yes,
12:59:41 2	not indi	cate to me that foam is a hazard, so I don't	13:02:41	2	there ar	e more than just those people, adults with
12:59:43 3	I can'	t imagine that if I had done more extensive	13:02:46	3	children	at the park, there are other people that I
12:59:49 4	hazard a	analyses that you're trying to get me to to	13:02:49	4	did not r	make any effort to count them.
12:59:53 5	describe	e, I don't know that I would have identified	13:02:51	5	Q.	I'm trying to understand if there were
12:59:57 6	foam as	a hazard in the 2013 instance either.	13:02:55	6	hundreds	of people there, 20 people, 500; how busy was
13:00:03 7	Q.	As a statistical matter, does the fact that	13:03:00	7	the park?	•
13:00:10 8	out of 42	incidents only one incident appears to be	13:03:01	8	A.	It's hard to say. There was a fair number
13:00:15	related to	o a particular causal factor mean that that	13:03:04	9	of peopl	e around. The cafe was pretty full.
13:00:19 10	one incid	ent does not need to be addressed going	13:03:08	10	Q.	Now you went to the park with who?
13:00:21 11	forward?		13:03:10	11	A.	I was there with a research assistant, I met
13:00:23 12	A.	No.	13:03:15	12	Ms. Carp	enter, I met Mr. Mieras, met Detective Bakke.
13:00:23 13	Q.	All right. Thank you.	13:03:25	13	I believe	e that's it.
13:00:26 14		Now you referred to the area	13:03:26	14	Q.	Who's the research assistant?
13:00:28 15	A.	You didn't let me finish my response.	13:03:30	15	A.	His name is Daniel Nemire, he's my son.
13:00:30 16	Q.	You said "no."	13:03:33	16	Q.	Okay. Page 5 of your report you state: I
13:00:31 17	A.	And I was taking a breath so I could	13:04:03	17	conducte	d a site inspection on June 11, 2019. During
13:00:36 18		MR. MOORE: That's all right.	13:04:07	18	the site in	nspection I was accompanied by part of
13:00:37 19		THE WITNESS: All right.	13:04:10	19	the time	by Melanie Carpenter, Kirby Mieras, and Tim
13:00:40 20	Q.	When you went to the falls on July 11, 2019,	13:04:17	20	Bakke. V	Vhy did you not identify your son?
13:00:51 21	was that	your first visit to Falls Park?	13:04:21	21	A.	It was an oversight.
13:00:55 22	A.	Yes.	13:04:22	22	Q.	Was he there in an official capacity?
13:00:55 23	Q.	Was that your first visit to South Dakota?	13:04:24		A.	Yes.
13:01:08 24	A.	Maybe. I might have driven through.	13:04:25		Q.	And you read your report before you
13:01:10 25	Q.	Okay. And what was the weather like on the	13:04:26	25	submitted	d it to Mr. Moore?
		STIREWALT & ASSOCIATES				STIREWALT & ASSOCIATES
		1-800-553-1953 info@stirewalt.com			1	-800-553-1953 info@stirewalt.com
		138				140
13:01:18	day you v	were there?	13:04:28	1	A.	Yes.
13:01:20 2	Α.	were there? What time of day?	13:04:28 13:04:30	2	Q.	Yes. And this was an oversight?
13:01:20 2 13:01:22 3		were there? What time of day? Let's start at		2	Q. A.	Yes. And this was an oversight? Apparently so.
13:01:20 2 13:01:22 3 13:01:24 4	Α.	were there? What time of day? Let's start at Well that's a good question.	13:04:30 13:04:33 13:04:34	2 3 4	Q. A. Q.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5	A. Q.	were there? What time of day? Let's start at Well that's a good question. How long were you there?	13:04:30 13:04:33 13:04:34 13:04:38	2 3 4 5	Q. A. Q. should kr	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about?
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6	A. Q.	were there? What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39	2 3 4 5 6	Q. A. Q. should kr A.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of.
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6 13:01:32 7	A. Q. A. maybe.	were there? What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39	2 3 4 5 6 7	Q. A. Q. should kr A. Q.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about?
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6 13:01:32 7 13:01:47 8	A. Maybe. don't kn	were there? What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41	2 3 4 5 6 7 8	Q. A. Q. should kr A. Q. visit?	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6 13:01:32 7 13:01:47 8 13:01:51 9	A. Q. A. maybe. don't kn a jacket	were there? What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41 13:04:43 13:04:44	2 3 4 5 6 7 8 9	Q. A. Q. should kr A. Q. visit? A.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6 13:01:32 7 13:01:47 8 13:01:51 9 13:01:55 10	A. Q. A. maybe. don't kn a jacket in for a c	were there? What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours.	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41 13:04:43 13:04:44	2 3 4 5 6 7 8 9	Q. A. Q. should kr A. Q. visit? A. Q.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes?
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6 13:01:32 7 13:01:47 8 13:01:51 9 13:01:55 10 13:01:57 11	A. A. maybe. don't kn a jacket in for a c	were there? What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours. Rainstorm.	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41 13:04:43 13:04:44 13:04:45	2 3 4 5 6 7 8 9 10	Q. A. Q. should kr A. Q. visit? A. Q.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes? Some of them I transcribed on the computer,
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13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6 13:01:32 7 13:01:47 8 13:01:51 9 13:01:55 10 13:01:57 11 13:01:57 12 13:01:58 13	A. Q. A. maybe. don't kn a jacket in for a G. Q. A. Q.	What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours. Rainstorm. Hail No snow.	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41 13:04:43 13:04:44 13:04:45 13:04:50 13:04:56	2 3 4 5 6 7 8 9 10 11 12	Q. A. Q. should kr A. Q. visit? A. Q. A. and som	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes? Some of them I transcribed on the computer, we of them I have here. Was he writing them or typing them into a
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13:01:20	A. Q. A. maybe. don't kn a jacket in for a c Q. A. Q. A. Q. there? A. Q.	What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours. Rainstorm. Hail No snow. and rain. No snow. No snow. There was no snow on July 11th, '19; was Not that I noticed. Okay. How many people did you count at the	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41 13:04:43 13:04:45 13:04:45 13:04:50 13:04:56 13:04:58 13:05:01 13:05:02 13:05:03 13:05:05 13:05:07	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. A. Q. should kr A. Q. visit? A. Q. A. and som Q. machine A. Q. A.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes? Some of them I transcribed on the computer, we of them I have here. Was he writing them or typing them into a not some sort, like a computer? He was hand writing Okay on a yellow legal pad. Were Were you taking notes? Yes, I also took notes.
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13:01:20	A. Q. A. maybe. don't kn a jacket in for a c Q. A. Q. A. Q. there? A. Q. park bein	What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours. Rainstorm. Hail No snow. and rain. No snow. No snow. There was no snow on July 11th, '19; was Not that I noticed. Okay. How many people did you count at the	13:04:30 13:04:33 13:04:34 13:04:39 13:04:41 13:04:43 13:04:45 13:04:47 13:04:56 13:04:56 13:05:01 13:05:02 13:05:03 13:05:05 13:05:07 13:05:09 13:05:11	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22 22 22 23 24 25 26 27 27 27 27 27 27 27 27 27 27	Q. A. Q. should kr A. Q. visit? A. Q. A. and som Q. machine A. Q. A. Q. A.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes? Some of them I transcribed on the computer, we of them I have here. Was he writing them or typing them into a of some sort, like a computer? He was hand writing Okay on a yellow legal pad. Were Were you taking notes? Yes, I also took notes. Can I see these notes?
13:01:20	A. Q. A. maybe. don't kn a jacket in for a c Q. A. Q. A. Q. there? A. Q. park bein	What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours. Rainstorm. Hail No snow. and rain. No snow. There was no snow on July 11th, '19; was Not that I noticed. Okay. How many people did you count at the ing there while you were there? Well I only counted families with small	13:04:30 13:04:31 13:04:33 13:04:38 13:04:39 13:04:41 13:04:43 13:04:44 13:04:45 13:04:50 13:04:50 13:04:50 13:05:01 13:05:02 13:05:03 13:05:07 13:05:01 13:05:11 13:05:11	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. A. Q. should kr A. Q. visit? A. and som Q. machine A. Q. A. Q. A. Q. A.	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes? Some of them I transcribed on the computer, we of them I have here. Was he writing them or typing them into a cof some sort, like a computer? He was hand writing Okay on a yellow legal pad. Were Were you taking notes? Yes, I also took notes. Can I see these notes? The notes I took All the notes from that inspection, please.
13:01:20 2 13:01:22 3 13:01:24 4 13:01:25 5 13:01:29 6 13:01:32 7 13:01:47 8 13:01:51 9 13:01:51 10 13:01:57 11 13:01:57 12 13:01:58 13 13:01:59 14 13:02:00 15 13:02:01 16 13:02:02 17 13:02:05 18 13:02:06 19 13:02:07 20 13:02:17 21 13:02:22 22 13:02:27 23	A. Q. A. maybe. don't kn a jacket in for a c Q. A. Q. A. Q. there? A. Q. park bein A. children Q.	What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I low, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours. Rainstorm. Hail No snow. and rain. No snow. There was no snow on July 11th, '19; was Not that I noticed. Okay. How many people did you count at the log there while you were there? Well I only counted families with small that were around the river.	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41 13:04:43 13:04:45 13:04:45 13:04:50 13:04:56 13:04:56 13:05:01 13:05:02 13:05:03 13:05:05 13:05:07 13:05:09 13:05:11 13:05:13	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 12 22 3 24	Q. A. Q. should kr A. Q. visit? A. and som Q. machine A. Q. A. Q. A. are trans	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes? Some of them I transcribed on the computer, we of them I have here. Was he writing them or typing them into a confusion of some sort, like a computer? He was hand writing Okay on a yellow legal pad. Were Were you taking notes? Yes, I also took notes. Can I see these notes? The notes I took All the notes from that inspection, please. Right. They are Some of the notes I took
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13:01:20	A. Q. A. maybe. don't kn a jacket in for a c Q. A. Q. A. Q. there? A. Q. park bein A. children Q. small chil	What time of day? Let's start at Well that's a good question. How long were you there? About 12 hours. Well, no, 10 altogether So in the morning it started out clear, I ow, maybe '60s, '70s weather, was not wearing, and then about 5 or 5:30 a big storm rolled couple of hours. Rainstorm. Hail No snow. and rain. No snow. There was no snow on July 11th, '19; was Not that I noticed. Okay. How many people did you count at the ing there while you were there? Well I only counted families with small that were around the river. Were there more than those families with lidren present in the park?	13:04:30 13:04:33 13:04:34 13:04:38 13:04:39 13:04:41 13:04:43 13:04:44 13:04:45 13:04:56 13:04:56 13:04:56 13:05:01 13:05:02 13:05:03 13:05:05 13:05:07 13:05:11 13:05:15 13:05:18	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 12 22 3 24	Q. A. Q. should kr A. Q. visit? A. and som Q. machine A. Q. A. Q. A. are transapparen	Yes. And this was an oversight? Apparently so. Any other oversights in your report we now about? Not that I'm aware of. Did your son take notes from during the Yes. Where are those notes? Some of them I transcribed on the computer, we of them I have here. Was he writing them or typing them into a of some sort, like a computer? He was hand writing Okay on a yellow legal pad. Were Were you taking notes? Yes, I also took notes. Can I see these notes? The notes I took All the notes from that inspection, please. Right. They are Some of the notes I took scribed in the interview document that thy was sent to you, and then other notes are

	Case 4:18-cv-04088-KES Document, 26-2	Filed 10/01/19 Page 9 of 22 PageID #: 228 143
13:05:25 1	described transcribed into a document called	13:08:31 1 Q. White and fluffy?
13:05:25	"Notes."	13:08:33 2 A. Sure.
13:05:31	Q. Where are the handwritten notes that existed	13:08:34 3 Q. So that's your description of the of it;
13:05:36	before they were transcribed?	13:08:36 4 right? You're not You don't
13:05:38 5	A. I don't keep those.	13:08:37 5 You don't have a basis from anybody's
13:05:39	Q. They were thrown away?	13:08:40 6 testimony that the snow appeared to be white and
13:05:39 7	A. Yes.	7 0 0 1
13:05:41	Q. Okay. Do you have the transcription?	13:08:42 / fluffy; do you? 13:08:45 8 A. Testimony is is absent descriptions. All
•	A. Yes.	• • • • • • • • • • • • • • • • • • • •
10.00.11		
13:05:44 10	, , , , , , , , , , , , , , , , , , ,	
13:05:51 11	A. [Handing.] The top of the page it says Site	13:09:01 11 might be described as fluffy.
13:05:55 12	Visit Notes or something like that.	13:09:03 12 Q. By who?
13:06:21 13	Q. In your site visit notes under 3F you put	13.09.04 13 A. Anybody looking at a big pile of snow.
13:06:25 14	"NB," which I believe is a note, question. Photos	13:09:07 14 Q. Anybody
13:06:29 15	show little snow on ground; why would someone think	13:09:08 15 A. But no, none of these members of these two
13:06:33 16	there was thick snow built up on one location on	13:09:10 16 of this party provided any descriptive
13:06:36 17	river, question mark.	13:09:14 17 characteristics of this pile of stuff.
13:06:39 18	Read that correctly?	13:09:19 18 Q. Did anyone of this party provide any
13:06:43 19	A. (Witness reviewing document.) Which one is	13:09:22 19 testimony as to the basis for their belief that it was
13:06:46 20	this?	13:09:26 20 snow, a pile of snow?
13:06:46 21	Q. I think it's number 3. I don't have a copy	13:09:28 21 A. No.
13:06:51 22	of it so I can't look at it.	13:09:29 22 Q. Okay. And how much time have you spent in
13:06:53 23	A. Yeah. Photos show little snow on ground.	13:09:37 23 the Upper Midwest, sir?
13:06:55 24	Q. And you only observed little snow on ground	13:09:41 24 A. Define "Upper Midwest." What's your
13:06:58 25	when you were there; right?	13:09:46 25 definition of "Upper Midwest"?
	STIREWALT & ASSOCIATES	STIREWALT & ASSOCIATES
	1-800-553-1953 info@stirewalt.com	1-800-553-1953 info@stirewalt.com
	142	144
13:06:59	142 A. Well these the photographs I'm referring	144 13:09:47 1 Q . I have the same definition as everyone who
13:06:59 1	A. Well these the photographs I'm referring	13:09:47 1 Q. I have the same definition as everyone who
13:06:59 1 13:07:02 2 13:07:05 3		13:09:47 1 Q. I have the same definition as everyone who 13:09:50 2 lives here has.
13:07:02 2 13:07:05 3	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident.	13:09:47 1 Q. I have the same definition as everyone who 13:09:50 2 lives here has.
13:07:02 2 13:07:05 3	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident.Q. And the question you pose, then, it's a	13:09:47
13:07:02 2 13:07:05 3 13:07:05 4	 A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. 	13:09:47 1 Q. I have the same definition as everyone who 13:09:50 2 lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest?
13:07:02 2 13:07:05 3 13:07:05 4 13:07:08 5	 A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. Why would anyone think there was snow on the river 	13:09:47 1 Q. I have the same definition as everyone who 13:09:50 2 lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:58 6 A. Yeah, probably driven through Iowa.
13:07:02 2 13:07:05 3 13:07:05 4 13:07:08 5 13:07:10 6	 A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. 	13:09:47 1 Q. I have the same definition as everyone who 13:09:50 2 lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:58 6 A. Yeah, probably driven through Iowa.
13:07:02 2 13:07:05 3 13:07:05 4 13:07:08 5 13:07:10 6 13:07:13 7 13:07:16 8	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. Why would anyone think there was snow on the river when there is little snow on the ground; right? A. That's correct.	13:09:47 1 Q. I have the same definition as everyone who lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:58 6 A. Yeah, probably driven through Iowa. 13:10:01 7 Q. Winter, fall, spring or summer? 13:10:03 8 A. It would have been summer.
13:07:02 2 13:07:05 3 13:07:05 4 13:07:08 5 13:07:10 6 13:07:13 7 13:07:16 8	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. Why would anyone think there was snow on the river when there is little snow on the ground; right?	13:09:47 1 Q. I have the same definition as everyone who lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:58 6 A. Yeah, probably driven through Iowa. 13:10:01 7 Q. Winter, fall, spring or summer? 13:10:03 8 A. It would have been summer. 13:10:04 9 Q. Okay. Have you spent any time at all in
13:07:02 2 13:07:05 3 13:07:05 4 13:07:08 5 13:07:10 6 13:07:13 7 13:07:16 8 13:07:17 9	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. Why would anyone think there was snow on the river when there is little snow on the ground; right? A. That's correct. Q. Did you get an answer to that question?	13:09:47 1 Q. I have the same definition as everyone who lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:58 6 A. Yeah, probably driven through Iowa. 13:10:01 7 Q. Winter, fall, spring or summer? 13:10:03 8 A. It would have been summer.
13:07:02 2 13:07:05 3 13:07:05 4 13:07:08 5 13:07:10 6 13:07:13 7 13:07:16 8 13:07:17 9 13:07:24 10	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. Why would anyone think there was snow on the river when there is little snow on the ground; right? A. That's correct. Q. Did you get an answer to that question? A. Well, no. I still wonder about it because	13:09:47 1 Q. I have the same definition as everyone who lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:56 A. Yeah, probably driven through I owa. 13:10:01 7 Q. Winter, fall, spring or summer? 13:10:03 8 A. It would have been summer. 13:10:04 9 Q. Okay. Have you spent any time at all in 13:10:07 10 North Dakota, South Dakota, or Minnesota in the
13:07:02 2 13:07:05 3 13:07:05 4 13:07:08 5 13:07:10 6 13:07:13 7 13:07:16 8 13:07:17 9 13:07:24 10 13:07:30 11	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. Why would anyone think there was snow on the river when there is little snow on the ground; right? A. That's correct. Q. Did you get an answer to that question? A. Well, no. I still wonder about it because the you know, if if this family, these two	13:09:47 1 Q. I have the same definition as everyone who lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:58 6 A. Yeah, probably driven through Iowa. 13:10:01 7 Q. Winter, fall, spring or summer? 13:10:03 8 A. It would have been summer. 13:10:04 9 Q. Okay. Have you spent any time at all in North Dakota, South Dakota, or Minnesota in the winter?
13:07:02	A. Well these the photographs I'm referring to here are the photographs taken on the day of the incident. Q. And the question you pose, then, it's a thought question, a working question, I understand. Why would anyone think there was snow on the river when there is little snow on the ground; right? A. That's correct. Q. Did you get an answer to that question? A. Well, no. I still wonder about it because the you know, if if this family, these two families thought that the foam piled on the river was	13:09:47 1 Q. I have the same definition as everyone who 13:09:50 2 lives here has. 13:09:51 3 A. Okay. 13:09:52 4 Q. North Dakota, South Dakota, Minnesota, Iowa. 13:09:55 5 How much time have you spent in the Upper Midwest? 13:09:58 6 A. Yeah, probably driven through Iowa. 13:10:01 7 Q. Winter, fall, spring or summer? 13:10:03 8 A. It would have been summer. 13:10:04 9 Q. Okay. Have you spent any time at all in 13:10:07 10 North Dakota, South Dakota, or Minnesota in the 13:10:11 11 winter? 13:10:12 12 A. No.
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13:26:30	Q. With	13:28:59 1 level of rock. You can also see that there is you
13:26:30 2	After rendering opinion that you don't	13:29:05 2 know, clearly there's one a top layer of rock here
13:26:32 3	believe that this foam constitutes a hazard; correct?	3 at the bottom of the photograph, and then as you move
13:26:39 4	A. I I think you're mischaracterizing	13:29:11 4 forward in the photograph there's a drop-off of a few
13:26:41 5	everything that I've said here.	13:29:15 5 inches and there is another level of rock ledge. So
13:26:43 6	Q. Do you not believe that your opinion on	13.29:19 6 it's a scalloped wall with several levels of
13:26:44 7	whether or not that foam was covering the drop-off is	13:29:24 7 projecting rocks that that create ledges.
13:26:48	just a tad bit influenced by the hindsight bias?	13:29:28 8 Q. Can you tell me where the water is in
13:26:53	A. Not at all.	13:29:30 9 Exhibit Number 22?
13:26:55 10	Q. All right. So when when Detective Bakke	1329.32 10 A. It's under the foam.
13:26:58 11	told you that from her standing location she can't see	13:29:33 11 Q. How do you know that?
13:27:01 12	rock ledges below because they are covered by foam	13.29.35 12 A. Because there's nowhere else that the river
13:27:05 13	A. I'm sorry. Say that again.	13.29.37 13 could be except in that area.
13:27:06 14	Q. When Detective Bakke told you, according to	13:29:39 14 Q. Can you tell me exactly where the foam ends
13:27:09 15	your own notes, quote, from her standing location she	13:29:42 15 and the river starts?
13:27:12 16	can't see rock ledges below because they are covered	13:29:44 16 A. That I don't know.
13:27:15 17	by foam, end quote; did you give his statement	13:29:45 17 Q. Because the foam is covering it; right?
13:27:21 18	credence, or disregard it?	13:29:49 18 A. Well
13:27:21 10	A. I asked a number of questions to clarify my	13:29:50 19 Q. Isn't that correct?
13:27:26 20	understanding, because I suspected that his earlier	1329.55 20 A. The You can also see from Exhibit 22 that
13:27:26 20	description of of foam covering the rocks where	13:29:59 21 some of the rocks are partially covered by foam but
13:27:39 22	Maggie was standing applied to the lower level of	13:30:03 22 not completely covered by foam. Since I was not there
13:27:45 23	rocks and not to the top layer of rocks.	13:30:09 23 then, or or at any time of high foam, I do I
13:27:45 23	Q. Did you write that down in your notes	13:30:08 24 don't know how many other levels of rock ledges there
13:27:48 2-7 13:27:50 25	anywhere?	13:30:23 25 are. I would not expect a shear drop-off there, but
13:27:50 23	STIREWALT & ASSOCIATES	STIREWALT & ASSOCIATES
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13:27:51	A. Yes, I did. He clarified that the top layer	13:30:29 1 and there could be, you know, multiple levels, you
13:27:55 2	of rocks were not covered by the foam.	13:30:31 2 know, lower down that are obstruct or the view of
13:28:00 3	Q. I'm sorry. Do you have this note in front	13:30:36 3 those are obscured by the foam or obstructed by the
13:28:01 4	of you, sir?	13:30:39 4 foam, so I can't tell. You can tell that there's
13:28:02 5	A. Yeah.	13:30:42 5 rocks poking up through the foam. Exactly where the
13:28:03 6	Q. Can you tell me	13:30:46 6 edge of the rock this particular rock ledge is and
13:28:03 7	A. Item number 3, the last phrase. However,	13:30:52 7 where the next rock ledge is, if there is one, I could
13:28:07	the foam did not obscure higher ledges at top of	13:30:56 8 not tell you.
13:28:10	canyon wall.	13:30:58 9 Q. Isn't it true
13:28:11 10	Q. Did Detective Bakke call this area a canyon?	13:30:59 10 A. But I can tell you, from looking at that
13:28:16 11	A. I don't believe so.	13:31:01 11 photograph, that the foam obscures some of the rocky
13:28:16 12	Q. Okay. That's your words.	13:31:06 12 ledges, which would indicate that the foam might
13:28:18 13	A. Yes.	13:31:10 13 obscure lower rocky ledges, and therefore appreciating
13:28:19 14	Q. Okay. And Detective Bakke told you that it	13:31:16 14 that fact would tell anybody thinking about walking
13:28:25 15	did not obscure higher ledges of the rock outcropping.	13:31:21 15 further out on the rocky ledges should be careful,
13:28:31 16	A. Yes.	13:31:25 16 because they can't really appreciate where the rock
13:28:32 17	Q. Can you point to any photograph and tell me	13:31:29 17 lower rock ledges are because they might be obscured
13:28:36 18	where which rock outcropping he's referring to as	13:31:32 18 by foam, or there just might be nothing but foam and
13:28:40 19	not being obscured?	13:31:39 19 river under there.
13:28:42 20	A. Yeah. In Exhibit 22 you can clearly see	13:31:55 20 Q. So it's your testimony that the fact that
13:28:48 21	that the officer here	13:31:58 21 the foam is covering something should tell someone
13:28:49 22	Q. No, no.	13:32:01 22 that it's covering something dangerous; is that right?
13:28:50 23	A is standing below some level of rock, and	13:32:06 23 A. That the foam is incompletely covering some
13:28:53 24	you can see that because you cannot see all of his	13:32:10 24 of the rocks, you can tell that from that exhibit,
13:28:56 25	shoes. That tells you that he is standing below some	13:32:14 25 would indicate that there might be more rock under the
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13:43:27	A. Well, on one hand you might think that you	16:18 1 Q. Right. And 16:18 2 A. So the expla	
13:43:34 2 13:43:38 3	cannot have too many warnings. If there's If	•	nation for that, if I can
	someone could get injured with this product or in this	4	
13:43:43 4 13:43:46 5	environment, then it could be helpful to provide a	_	you soom to be really interested
13:43:46 5 13:43:51 6	warning about that. On the other hand, if you have warnings about you know, for every situation, then		ou seem to be really interested e to the deck from the driveway
13:43:58 7	you can have too many warnings and people will ignore	_	ow caution tape was, but they
13:44:02	all of them. So it's important to be judicious about	•	on a door and so it was
13:44:08	what warnings you put up.	'	the front door and encounter the
13:44:10 10	Q. Haven't you in fact testified in cases where		is why the the you know,
13:44:14 11	you opined that it was necessary to provide a warning	4.4	g, you know, at that location to
13:44:18 12	notwithstanding the fact that the hazard at issue was	4.0	nissing railing here, or there's
13:44:21 13	open and obvious?		hat you should pay attention to.
13:44:23 14	A. Not that I recall.		ution tape at the entrance to the
13:44:25 15	Q. Do you recall testifying in the Yglesias	us:55 15 deck was insufficient,	because because they hadn't
13:44:28 16	case?	17:01 16 addressed the the a	actual hazard, which is 20, 30
13:44:29 17	A. Yglesias, yes.	17:06 17 feet away.	
13:44:31 18	Q. That yellow caution tape was needed to warn	Q. But was still i	n plain sight.
13:44:34 19	Ms. Yglesias of the edge of a deck where the railing	A. Well it was a	absence of sight. You know,
13:44:38 20	had been removed?	given the expectation	for a railing, then we don't
13:44:39 21	A. Yeah, and that's because there's expectation	notice when it's gone.	You know, it takes four to 16
13:44:42 22	for a railing, and they removed the railing.	17:23 22 times longer to to r	otice something that is counter
13:44:44 23	Q. And it wasn't open	17:27 23 to one's expectation t	han it is to notice something
13:44:45 24	A. So this is	17:31 24 that is consistent with	n your expectation.
13:44:46 25	If I could finish?	Q. Even though	it was at her own home.
	STIREWALT & ASSOCIATES	STIREWAL	T & ASSOCIATES
	1-800-553-1953 info@stirewalt.com	1-800-553-1953 i	nfo@stirewalt.com
	170	1 A Famadalliub	172
13:44:46 1	Q. Please.		ecause it's at her own home.
13:44:47 2	Q. Please.A. You know, so this is a deck that on that	17:39 2 Q . Well And it	ecause it's at her own home. 's your opinion in that
13:44:47 2 13:44:50 3	Q. Please.A. You know, so this is a deck that on that side was maybe 6 to 8 feet above the ground, and so at	2 Q. Well And it araz 3 case has is consistent	ecause it's at her own home. 's your opinion in that with your belief that one of
13:44:47 2 13:44:50 3 13:44:56 4	Q. Please.A. You know, so this is a deck that on that side was maybe 6 to 8 feet above the ground, and so at issue there, as these people were familiar with the	Q. Well And it case has is consistent the main purposes of wa	ecause it's at her own home. 's your opinion in that with your belief that one of arnings is to inform users about
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1 In order to --1 people who come to Falls Park during February or March 13:48:26 2 2 If it's a hidden hazard, yes. may interpret the white foam stuff -- white stuff as 3 3 Q. If it's a hidden hazard; -being? 13:48:29 13:51:04 4 4 Right. Have I done any studies? A. 13:51:04 A. 13:48:31 5 -- correct? 5 Yeah. a. 13:51:05 a. 13:48:31 6 Or if it's a hazard of which a person may 6 A. No 13:51:06 13:48:32 7 not be aware. 13:51:07 7 Q. Okay. Have you done any studies to analyze 13:48:34 8 whether or not people approach the white stuff on the 8 Α. Which is a hidden hazard 13:51:10 13:48:35 Q. Right. And -- And hazards at -- sometimes 9 river during the February and March months at Falls 13:51:15 13:48:37 10 can be open and at other times cannot; correct? 13:51:18 10 13:48:41 13:48:44 11 I don't know what that means. 13:51:19 11 A. A. No 12 Okav. Well if you have a roller coaster 13:51:25 12 Q. So whether or not the white stuff that 13:48:45 13:48:48 13 which has part of the roller coaster at the bottom 13:51:29 13 accumulates below the falls at Falls Park every year 14 where the people are upside down and their legs are 13:51:33 14 in February or March con -- attracts people closer to 13:48:51 13:48:54 15 hanging down, --13:51:39 15 the bank is not something that you've conducted any 13:48:54 16 13:51:42 16 scientific study of: is that correct? Α. Right. 13:48:55 17 O -- the fact that their legs are hanging down 13:51:44 17 Well I think you're mischaracterizing what I 13:48:57 18 13:51:47 18 would be open and obvious to someone when they go -said about understanding this pile of white stuff as 13:49:00 19 the roller coaster goes through that part of the 13:51:51 19 snow and -- and wondering how that could come about So that pile of snow is -- you know, did not -- or a 13:49:03 20 roller coaster. 13:51:57 20 13:49:03 **21** 13:52:02 21 Α. -- pile of white stuff did not occur without a If you had actually read that paper, I 13:49:06 **22** actually had maybe three or four papers about that 13:52:08 22 context, and the context in this case is, at least 13:49:08 23 13:52:12 23 same case, and it is not an obvious hazard because from the photographs that I've seen, there were very 13:49:13 **24** people think about roller coasters as the cars on top 13:52:15 24 few places that had any snow, and those patches of 13:49:17 **25** 13:52:18 25 snow were very small. So given that, and -- and of the track, and at issue in that particular case was STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES 1-800-553-1953 info@stirewalt.com 1-800-553-1953 info@stirewalt.com 174 176 1 that it is an inverted roller coaster and people don't 1 knowing what I know about the incidence of foam 13:52:25 13:49:21 2 2 think about inverted roller coasters when they think 13:52:29 buildup in that area and maybe some other areas of the 13:49:27 3 about roller coasters, even if they've just gotten off 3 river, then it's not likely that there would be -- I'm 13:52:32 13:49:30 4 of an inverted roller coaster. 4 sorry, I'm phrasing that wrong. 13:52:39 13:49:33 So in that case it was a nonobvious hazard 5 Because there was only small patches of snow 13:52:41 13:49:35 6 6 because we -- you know, in this case the track was, in -- in a few places in the park according to 13:52:47 13:49:40 you know, 10, 12 feet above the ground, and if you 7 photographs I've seen, it seems hard to imagine how 7 13:49:45 13:52:50 8 think about roller coasters as riding on top of the 8 someone would see a pile of white stuff and somehow 13:52:53 13:49:48 think that was a big pile of snow. That pile of snow 9 track, then there's no indication that one could get 9 13:52:58 13:49:52 10 injured by walking underneath the roller coaster 13:53:01 10 is 10 to 20 feet tall, and I don't see any other piles 13:40:55 of snow anywhere else on the grounds. Why would I 11 track, and therefore, a specific hazard needs to be 13:53:04 11 13:49:58 13:50:02 12 provided 13:53:08 12 think there would be snow there? So that's my 13:50:03 13 13:53:10 13 Okay. Some people think roller coasters question. Q. 13:50:06 14 13:53:11 14 that people ride on top. Some people may think that So questions about, you know, have I done 13:50:09 15 13:53:14 15 any research on how people interpret a big pile of piles of white stuff might be snow. True? 13:50:14 16 I actually did research to find out how 13:53:17 16 white stuff would not be the study that I would do, it 13:50:17 17 13:53:23 17 would be, you know, interpreting a big pile of white people think about roller coasters, so I know that 75 13:50:23 18 13:53:25 18 stuff in the context of -- of very little, if any, percent, maybe 78 percent of the people that I 13:53:30 19 13:50:26 19 surveyed thought about roller coaster tracks riding on snow on the ground. 13:50:31 20 -- I'm sorry, roller coaster trains riding on top of 13:53:33 20 O Moving on. 13:50:34 **21** 13:53:34 21 the track and not underneath, even though all of those You take issue with Ms. Gill's opinion that 13:50:37 **22** 13:53:38 22 people had ridden an inverted roller coaster before. the foam attracts children and people to the river 13:50:40 23 13:53:43 23 I have not done any studies to evaluate what set of bank. Is that a fair statement, that you take issue 13:50:46 24 13:53:47 24 with that? visual stimuli might be interpreted as snow or not. 13:50:50 25 Have you done any studies to interpret what 13:53:48 25 I take issue in it that she failed to STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES 1-800-553-1953 info@stirewalt.com 1-800-553-1953 info@stirewalt.com

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		_	0 179
13:53:50	provide any evidence.	13:56:00	My recollection is that when the same
13:53:51 2	Q. I just asked you a question, a very simple	13:56:03 2	question has been posed to various people, they all
13:53:54	question.	13:56:05	say pretty much the same thing. They don't see the
13:53:54	Do you take issue with it or not?	13:56:08 4	snow as an attractant. So I did not see the need to
13:53:56 5	A. It's not a simple question, actually. O. Sure it is	13:56:12 5 13:56:16 6	belabor the point; these people thought it was an
_	Q. Sure, it is.A. No. And she can say whatever she wants, but	_	attractant, this person said it was an attractant, you know, the the from my reading of these
13:53:59 / 13:54:04 8	A. No. And she can say whatever she wants, but the issue that I have with that statement from Ms.	13:56:20 / 13:56:23 8	statements and transcripts it seems that the bulk of
13:54:07	Gill is she makes the statement without providing any	13:56:26 9	the people, you know, the consider the question of
13:54:12 10	evidence besides some anecdotal evidence.	13:56:31 10	foam as an attractant to be I don't know, a ques
13:54:17 11	Q. Okay. Do you believe, or not believe, in	13:56:43 11	What's the right word? They're surprised by the
13:54:19 12	your opinion, that the presence of foam in Falls Park	13:56:47 12	question. It's like, why would that question even
13:54:23 13	during the months of February and March on an annual	13:56:49 13	come up. So So yeah, I didn't feel the need to
13:54:25 14	basis attracts people closer to the river bank?	13:56:54 14	expand on that.
13:54:29 15	A. I have no idea if that's true or not.	13:56:55 15	Q. So you didn't feel the need to provide the
13:54:32 16	Q. Okay. So you have no opinion one way or	13:56:57 16	entire basis of your rebuttal to Ms. Gill?
13:54:36 17	another as to whether or not the foam acts as an as	13:57:02 17	A. List all the pros and cons? No.
13:54:39 18	an attractant to children; is that correct?	13:57:04 18	Q. Well, no. You said that one of the reasons
13:54:42 19	A. I'd have to go with what with the same	13:57:06 19	you don't agree with Ms. Gill is because city
13:54:46 20	questions posed to various city staff, park staff, and	13:57:08 20	personnel told you they don't believe it's an
13:54:51 21	and they answer the question I don't see that the	13:57:11 21	attractant, and then you cite to one guy. If there
13:54:53 22	foam is a particular attractant, so	13:57:14 22	are more people who told you that, don't you think you
13:54:57 23	Q. That is	13:57:16 23	should tell me who those people are so I can ask them?
13:54:57 24	A so that's that's the evidence that I	13:57:20 24	A. Well you're you're you have the same
13:54:59 25	have. They don't see that foam is a particular	13:57:23 25	information I do in terms of statements and deposition
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			190
12:55:02	178	12:57:26 1	transcripts Ms Gill provides you know if she
13:55:03 1	attractant at least before the 2018 incident.	13:57:26 1	transcripts. Ms. Gill provides you know, if she
13:55:07 2	attractant at least before the 2018 incident. Q. All right.	13:57:31 2	transcripts. Ms. Gill provides you know, if she had such information you would think that it would be
13:55:07 2	attractant at least before the 2018 incident.	_	transcripts. Ms. Gill provides you know, if she had such information you would think that it would be provided in her report. She goes on and on about foam
13:55:07 2 13:55:07 3	attractant at least before the 2018 incident. Q. All right. A. And, you know, that's the only information I	13:57:31 2 13:57:33 3	transcripts. Ms. Gill provides you know, if she had such information you would think that it would be
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14:12:49 1	causal factor in Maggie's death.	14:15:15 1 Q. And you have looked at all the available
14:12:51 2	Q. And consequently, Ms. Jayne, who you accuse	14:15:17 2 evidence.
14:12:57 3	of failing to adequately supervise Maggie, would be	14:15:17 3 A. Yes.
14:13:01 4	the person responsible for Maggie's death; true?	14:15:19 4 Q. And I'd assume you'd want to reach that kind
14:13:07 5	A. Well, I guess I have trouble with your	14:15:22 5 of opinion based on sound facts, sound science and
14:13:13 6	characterization.	14:15:28 6 sound experience and expertise; correct?
14:13:14 7	Q. I'm sure you do because you'd like to keep	14:15:32 7 A. Yes.
14:13:16	it nice and sterile, wouldn't you? But the reality of	14:15:35 8 Q. One of the facts that you base your opinion
14:13:20	it is is when you say Courtney Jayne failed to	14:15:38 9 on is by observation you made while you were at Falls
14:13:22 10	adequately supervise her child and she died, what	14:15:41 10 Park on June 11, 2019; correct?
14:13:25 11	you're saying is she's responsible for her death.	14:15:45 11 A. Yes.
14:13:27 12	Isn't that the reality here?	14:15:46 12 Q. And during that time you state you observed
14:13:31 13	A. I can	14:15:50 13 groups with young children to determine how closely
14:13:32 14	I can understand that, yes.	14:15:53 14 the accompanying adults monitored the children;
14:13:37 15	Q. That's an awfully serious thing to say;	14:15:58 15 correct?
14:13:39 16	isn't it, sir?	14:15:59 16 A. Yes, and how close
14:13:40 17	A. It is a serious matter.	14:15:59 17 Q . And you photo
14:13:43 18	Q. And it's something that you are saying in	14:16:00 18 A. the children got to the river.
14:13:47 19	your capacity as a human factors engineer and an	14:16:02 19 Q. And you photographed the young children that
14:13:53 20	experimental psychologist; correct?	14:16:05 20 you observed; correct?
14:13:56 21	A. Yes.	14:16:06 21 A. Yes.
14:13:58 22	Q. With no expertise in child care; correct?	14:16:06 22 Q. Did you get permission to photograph
14:14:03 23	Correct?	14:16:08 23 children at Falls Park?
14:14:03 24	A. Well, I think that I've laid out the	14:16:09 24 A. I did not.
14:14:06 25	bases for my opinions	14:16:10 25 Q. All right. Did you ask their parents if it
	STIREWALT & ASSOCIATES	STIREWALT & ASSOCIATES
	1-800-553-1953 info@stirewalt.com	1-800-553-1953 info@stirewalt.com
	190	192
14:14:08 1	190 Q. And you've said you're not an expert in	192 14:16:13 1 was okay if you took photographs of minors?
14:14:08 1 14:14:10 2		
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	130	100
14:17:06	A. Maybe a hundred or a couple hundred feet	14:18:56 1 A. I think it's irrelevant because in all the
14:17:09 2	away.	14:18:58 2 cases the children were staying away from the river,
14:17:10	Q a couple hundred feet away maybe. You	14:19:01 3 however that came about, and the and the adults
14:17:12 4	were far enough away that you couldn't tell whether or	14:19:05 4 were staying close to the children, however that came
14:17:14	not these adults were giving verbal instructions to	14:19:08 5 about. So whether they are they were doing
14:17:18 6	the children; were you? A. That's correct.	14:19:12 6 having verbal interactions or not is irrelevant 14:19:17 7 because the behavior shows the children stayed away
	A. That's correct. Q. Isn't it true that verbal instructions can	
	be an adequate form of supervision of a child?	• • • • • • • • • • • • • • • • • • • •
14:17:22 9	A. It can be.	14:19:21 9 Q. You went to Falls Park in June when there 14:19:27 10 was no foam; right?
14:17:28 11	Q. Isn't that what the law of South Dakota	14:19:30 11 A. Not piles of foam.
14:17:29 12	says?	14:19:31 12 Q. There was no foam in piles below the river;
14:17:30 13	A. I don't know.	14:19:34 13 correct?
14:17:31 14	Q. You never bothered to look; did you?	14:19:34 14 A. Right. There were There was
14:17:34 15	A. It's not within my domain of expertise.	14:19:36 15 Q. You've already tes
14:17:36 16	Q. Isn't it true that the law of the State of	14:19:38 16 A foam gathered in nooks and crannies along
14:17:39 17	South Dakota permits daycare centers to utilize vocal	14:19:41 17 some parts of the river.
14:17:42 18	or verbal instruction as a part of adequate	14:19:42 18 Q. You've already testified that the conditions
14:17:45 19	supervision, sir?	14:19:44 19 that existed when you were there were not
14:17:50 20	A. Yes	14:19:46 20 substantially similar to what existed on March 18,
14:17:50 21	Q . Okay.	14:19:49 21 2018, and you agree that the conditions were not
14:17:51 22	A verbal instruction is certainly one way	14:19:54 22 substantially similar.
14:17:53 23	to monitor.	14:19:55 23 A. The conditions in terms of the foam and the
14:17:55 24	Q. All right.	14:19:59 24 snow.
14:17:56 25	A. And it appeared as if some of the adults in	14:19:59 25 Q. And you saw eight groups of 26 children, you
	STIREWALT & ASSOCIATES	STIREWALT & ASSOCIATES
	1-800-553-1953 info@stirewalt.com	1-800-553-1953 info@stirewalt.com
	194	196
	134	190
14:17:59	the in the scenes that I saw were using verbal	14:20:03 1 don't know their ages; correct? You don't
14:17:59 2	the in the scenes that I saw were using verbal Q. You wrote	14:20:03 1 don't know their ages; correct? You don't 14:20:06 2 A. I can estimate their ages.
14:17:59 2 14:18:06 3	the in the scenes that I saw were using verbal Q. You wrote A instructions as a way to monitor their	14:20:03 1 don't know their ages; correct? You don't 14:20:06 2 A. I can estimate their ages. 14:20:07 3 Q. Do you know where they were from?
14:17:59 2 14:18:06 3 14:18:09 4	the in the scenes that I saw were using verbal Q. You wrote A instructions as a way to monitor their children.	14:20:03 1 don't know their ages; correct? You don't 14:20:06 2 A. I can estimate their ages. 14:20:07 3 Q. Do you know where they were from? 14:20:09 4 A. I do not.
14:17:59 2 14:18:06 3 14:18:09 4 14:18:10 5	the in the scenes that I saw were using verbal Q. You wrote A instructions as a way to monitor their children. Q. You're saying it appears that it did?	14:20:03 1 don't know their ages; correct? You don't 14:20:06 2 A. I can estimate their ages. 14:20:07 3 Q. Do you know where they were from? 14:20:09 4 A. I do not. 14:20:10 5 Q. Do you know whether they were with
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14:17:59	the in the scenes that I saw were using verbal Q. You wrote A instructions as a way to monitor their children. Q. You're saying it appears that it did? A. Yes. Q. You wrote, quote, given my distance from the groups I could not determine whether the adults used verbal used vocal instruction to keep the children close to them and away from the river, or whether the children had already learned to maintain a safe distance from the river. A. That's right. Q. Okay. Now you're telling me it appeared to you that they were using vocal instructions. A. Yeah. One of the exhibits in my report shows a pair of adults who are on a wall above where their child was standing, or was playing, and there	14:20:03 1 don't know their ages; correct? You don't 14:20:06 2 A. I can estimate their ages. 14:20:07 3 Q. Do you know where they were from? 14:20:09 4 A. I do not. 14:20:10 5 Q. Do you know whether they were with 14:20:13 6 parents 14:20:13 7 A. I do not. 14:20:14 8 Q or child care people? 14:20:15 9 A. I do not. 14:20:16 10 Q. Or daycare people? 14:20:17 11 A. That's why I was I think careful to say the 14:20:20 12 adults that were accompanying the child children. 14:20:21 13 Q. Okay. Do you know if they'd been to the 14:20:22 14 park before? 14:20:25 15 A. I do not. 14:20:26 16 Q. Do you know if they'd been to Do you know if they knew how to swim? 14:20:20 18 A. I do not.
14:17:59	the in the scenes that I saw were using verbal Q. You wrote A instructions as a way to monitor their children. Q. You're saying it appears that it did? A. Yes. Q. You wrote, quote, given my distance from the groups I could not determine whether the adults used verbal used vocal instruction to keep the children close to them and away from the river, or whether the children had already learned to maintain a safe distance from the river. A. That's right. Q. Okay. Now you're telling me it appeared to you that they were using vocal instructions. A. Yeah. One of the exhibits in my report shows a pair of adults who are on a wall above where their child was standing, or was playing, and there was multiple looks back and forth, some kind of	14:20:03 1 don't know their ages; correct? You don't 14:20:06 2 A. I can estimate their ages. 14:20:07 3 Q. Do you know where they were from? 14:20:09 4 A. I do not. 14:20:10 5 Q. Do you know whether they were with 14:20:13 6 parents 14:20:13 7 A. I do not. 14:20:14 8 Q or child care people? 14:20:15 9 A. I do not. 14:20:16 10 Q. Or daycare people? 14:20:17 11 A. That's why I was I think careful to say the 14:20:20 12 adults that were accompanying the child children. 14:20:21 13 Q. Okay. Do you know if they'd been to the 14:20:22 14 park before? 14:20:25 15 A. I do not. 14:20:26 16 Q. Do you know if they'd been to Do you know if they knew how to swim? 14:20:30 18 A. I do not. 14:20:31 Q. Do you know anything at all about these
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14:20:50	photographs, no.	14:23:07 1 Q. Three or four or maybe five?	
14:20:51 2	Q. Are you going to testify in open court under	14:23:09 2 A. More likely even less than three.	
14:20:54 3	oath that you considered this to be a valid scientific	14:23:12 3 Q. Or six?	
14:20:58 4	study of some sort?	14:23:12 4 A. They were quite close, which is	
14:21:01 5	A. I did not present this as a scientific	14:23:15 5 Q. Did you measure them?	
14:21:04 6	study.	14:23:15 6 A. You know, if you keep	
14:21:04 7	Q. This is	14:23:16 7 Stop interrupting me and maybe I can finish	
14:21:05	A. I presented this as a demonstration of	14:23:18 8 the sentence.	
14:21:08 9	behavior of adults and children in the park on the day	14:23:19 9 But you can determine, by looking at the	
14:21:13 10	that I was there and was able to observe.	14:23:20 10 photographs, that all the that each child had an	
14:21:17 11	Q. Nowhere in your	14:23:24 11 adult that was close, you know, within arm's distance	
14:21:18 12	A. I don't think I've ever said that this was a	14:23:29 12 or within taking one step.	
14:21:20 13	empirical study. But as a demonstration I think I	14:23:32 13 Q. You say most of the time there was an adult	
14:21:24 14	think that it's if I were to do statistical	14:23:34 14 positioned between the young child and the river.	
14:21:28 15	analyses I know that if I were to do like a	14:23:37 15 A. Yes.	
14:21:34 16	Chi-Square test on the data, I would find that there	14:23:38 16 Q. That would, by implication, mean that some	
14:21:39 17	was have significant findings of children staying	14:23:42 17 of the times there was not.	
14:21:42 18	away from the river.	14:23:45 18 A. And which	
14:21:43 19	Q. Well you didn't do that before you accused	14:23:49 19 Which does not mean that the adult was not	
14:21:45 20	Courtney Jayne of being responsible for her child's	14:23:51 20 monitoring the child, it means that the adult might	
14:21:47 21	death; did you?	14:23:54 21 have been on the other side of the child from the	
14:21:48 22	A. No need to because I've done Chi-Squared	14:23:57 22 river, but within reach.	
14:21:51 23	Q. And you didn't	14:23:59 23 Q. So when you wrote, most of the time there	
14:21:51 24	A. If I could finish.	14:24:01 24 was an adult positioned between the young child and	
14:21:53 25	Because I've done Chi-Square tests, I know	14:24:03 25 the river,	
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	1-800-553-1953 info@stirewalt.com	1-800-553-1953 info@stirewalt.com	
	100	900	
	198	200	
14:21:55 1	that if you have zero instances of an event with 26	14:24:04 1 A. Yes?	
14:21:55 1 14:22:01 2			
_	that if you have zero instances of an event with 26	14:24:04 1 A. Yes?	
14:22:01 2	that if you have zero instances of an event with 26 zero instances of a frequency of one event out of the	14:24:04	
14:22:01 2 14:22:05 3	that if you have zero instances of an event with 26 zero instances of a frequency of one event out of the possible, you know, 26 in this case, then I would find	14:24:04 1 A. Yes? 14:24:04 2 Q. you knew full well that some of the time 14:24:06 3 there was not an adult positioned between the young	
14:22:01 2 14:22:05 3 14:22:11 4	that if you have zero instances of an event with 26 zero instances of a frequency of one event out of the possible, you know, 26 in this case, then I would find a statistical significance using a Chi-Square test.	14:24:04 1 A. Yes? 14:24:04 2 Q you knew full well that some of the time 14:24:06 3 there was not an adult positioned between the young 14:24:09 4 child and the river. Why didn't you just write that?	
14:22:01 2 14:22:05 3 14:22:11 4 14:22:15 5	that if you have zero instances of an event with 26 zero instances of a frequency of one event out of the possible, you know, 26 in this case, then I would find a statistical significance using a Chi-Square test. Q. Do you really think a first-year student at	14:24:04 1 A. Yes? 14:24:04 2 Q you knew full well that some of the time 14:24:06 3 there was not an adult positioned between the young 14:24:09 4 child and the river. Why didn't you just write that? 14:24:11 5 A. Well the I think the context of that	
14:22:01 2 14:22:05 3 14:22:11 4 14:22:15 5 14:22:18 6	that if you have zero instances of an event with 26 zero instances of a frequency of one event out of the possible, you know, 26 in this case, then I would find a statistical significance using a Chi-Square test. Q. Do you really think a first-year student at Santa Cruz in this experimental psychology department	14:24:04 1 A. Yes? 14:24:04 2 Q you knew full well that some of the time 14:24:06 3 there was not an adult positioned between the young 14:24:09 4 child and the river. Why didn't you just write that? 14:24:11 5 A. Well the I think the context of that 14:24:14 6 sentence, if I could have my binder back.	
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14:22:01 2 14:22:05 3 14:22:11 4 14:22:15 5 14:22:18 6 14:22:21 7 14:22:25 8	that if you have zero instances of an event with 26 zero instances of a frequency of one event out of the possible, you know, 26 in this case, then I would find a statistical significance using a Chi-Square test. Q. Do you really think a first-year student at Santa Cruz in this experimental psychology department could get away with calling this some sort of valid test to to evidence a theory, as basis for	14:24:04 1 A. Yes? 14:24:04 2 Q you knew full well that some of the time 14:24:09 4 there was not an adult positioned between the young 14:24:09 4 child and the river. Why didn't you just write that? 14:24:11 5 A. Well the I think the context of that 14:24:14 6 sentence, if I could have my binder back. 14:24:16 7 Where did that go? 14:24:20 8 Q. It's in your report.	
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	Case 4:18-cv-04088-KES Document 26-2	Filed 10	1/01/19 Page 17 of 22 PageID #: 236 ₂₀₇
14:30:16 1	think that was snow, given the context. So, for	14:34:05	A. Photogrammetry?
14:30:22 2	example, the the river's a river, it doesn't	14:34:07 2	Q. Yes.
14:30:26 3	that river could not be anywhere else except where it	14:34:07 3	A. Yes.
14:30:31 4	was. You know, they walked up to the river, did not	14:34:08 4	Q. And that's the science of making reliable
14:30:34 5	encounter a river, so it had to be a river there, not	14:34:11 5	measurements by use of photographs; correct?
14:30:38 6	a big field where someone might pile up snow, so	14:34:14 6	A. The science of estimating measurements by
14:30:44 7	you know, so that doesn't make sense to me either.	14:34:19 7	using photographs.
14:30:50	Q. It probably doesn't make sense sitting in a	14:34:21 8	Q. What's your background in that field?
14:30:52	conference room in Minnesota, may make sense when	14:34:27	A. I have done photogram metric analyses of
14:30:55 10	you're out at Sioux Falls with a number of kids.	14:34:30 10	photographs using measurements of a known o or
14:31:01 11	I want to ask you about your opinion with	14:34:36 11	known measurements of an object in the photograph and
14:31:05 12	respect to the distance of Crissy Melendez and when	14:34:38 12	then extrapolating two objects in the same plane to
14:31:13 13	she took this photograph a photograph. If you turn	14:34:46 13	determine or to estimate measurements for a second
14:31:16 14	to page 12 of your report, you state: "During the	14:34:50 14	object in that photograph. I've also used a software
14:31:30 15	site visit, I used my camera to adjust my view to	14:34:54 15	program called PhotoModeler which does the same thing
14:31:33 16	match the view shown in both photos of the children	14:35:00 16	in a much quicker, easier way as long as you have
14:31:36 17	taken by Ms. Melendez." The "exercise indicated that	14:35:06 17	measurements of other features in the scene.
14:31:41 18	Ms. Melendez was probably standing about 40 feet from	14:35:13 18	Q. Did you use PhotoModeler in this instance?
14:31:44 19	the river edge, rather than 10 to 15 feet."	14:35:16 19	A. No.
14:31:48 20	Did I read that correctly?	14:35:17 20	Q. Did you have any known measurements to
14:31:50 21	A. Yes.	14:35:20 21	utilize in this instance?
14:31:58 22	Q. Melendez Exhibit Number 4 is one of those	14:35:23 22	A. I just
14:32:01 23	photographs; correct?	14:35:23 23	As I said, I I used the method as des
14:32:01 24	A. Yes.	14:35:28 24	as I described.
14:32:03 25	Q. Melendez Exhibit Number 5 is one of those	14:35:29 25	Q. What was your error rate regarding the
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	206		208
14:32:07	photographs; correct?	14:35:31 1	40-foot measurement; plus or minus in feet?
_			
14:32:07	A. Yes.	14:35:38 2	A. Yeah, maybe plus or minus a foot or two.
14:32:07 2 14:32:13 3	A. Yes.Q. Tell me again exactly how you made the	14:35:38 2 14:35:41 3	A. Yeah, maybe plus or minus a foot or two.Q. What method did you use to come up with the
14:32:13	Q. Tell me again exactly how you made the	14:35:41 3	Q. What method did you use to come up with the
14:32:13 3 14:32:15 4	Q. Tell me again exactly how you made the determination that they were 40 feet away?	14:35:41 3 14:35:44 4	Q. What method did you use to come up with the 40-foot measurement?
14:32:13 3 14:32:15 4 14:32:19 5	Q. Tell me again exactly how you made the determination that they were 40 feet away?A. I started at the river edge with my camera,	14:35:41 3 14:35:44 4 14:35:45 5	Q. What method did you use to come up with the40-foot measurement?A. A tape measure.
14:32:13 3 14:32:15 4 14:32:19 5 14:32:25 6	 Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to 	14:35:41 3 14:35:44 4 14:35:45 5 14:35:46 6	 Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms.
14:32:13 3 14:32:15 4 14:32:19 5 14:32:25 6 14:32:34 7	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with	14:35:41 3 14:35:44 4 14:35:45 5 14:35:46 6 14:35:48 7	 Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use?
14:32:13 3 14:32:15 4 14:32:19 5 14:32:25 6 14:32:34 7 14:32:41 8	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce	14:35:41 3 14:35:44 4 14:35:45 5 14:35:46 6 14:35:48 7 14:35:49 8	 Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember
14:32:13 3 14:32:15 4 14:32:19 5 14:32:25 6 14:32:34 7 14:32:41 8 14:32:46 9	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez	14:35:41 3 14:35:44 4 14:35:45 5 14:35:46 6 14:35:48 7 14:35:49 8 14:35:51 9	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly.
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder.	14:35:41 3 14:35:44 4 14:35:45 5 14:35:46 6 14:35:48 7 14:35:49 8 14:35:51 9 14:35:51 10	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind?
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay.	14:35:41 3 14:35:44 4 14:35:45 5 14:35:46 6 14:35:48 7 14:35:49 8 14:35:51 9 14:35:51 10 14:35:52 11	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know.
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and	14:35:41 3 14:35:44 4 14:35:45 5 14:35:46 6 14:35:49 8 14:35:51 9 14:35:51 10 14:35:52 11 14:35:53 12	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length?
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know.
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14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that reproduced everything in my viewfinder that was shown in this photograph. Once I was in that location I	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know. Q. What was the type of zoom she was using, if at all?
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14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that reproduced everything in my viewfinder that was shown in this photograph. Once I was in that location I tried to put myself in a location that also captured what could be seen in the photograph of the two girls, which is Melendez Exhibit Number 4, and when I found	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know. Q. What was the type of zoom she was using, if at all? A. I don't know. Q. Was she zoomed? A. I don't know.
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14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that reproduced everything in my viewfinder that was shown in this photograph. Once I was in that location I tried to put myself in a location that also captured what could be seen in the photograph of the two girls, which is Melendez Exhibit Number 4, and when I found that then I confirmed that I was able to reproduce what I could see in the Jeremy photo number 5, and was	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know. Q. What was the type of zoom she was using, if at all? A. I don't know. Q. Was she zoomed? A. I don't know. Q. Was it digital? A. I don't know. I assume so.
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that reproduced everything in my viewfinder that was shown in this photograph. Once I was in that location I tried to put myself in a location that also captured what could be seen in the photograph of the two girls, which is Melendez Exhibit Number 4, and when I found that then I confirmed that I was able to reproduce what I could see in the Jeremy photo number 5, and was finally able to find a spot on the rock where I could	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know. Q. What was the type of zoom she was using, if at all? A. I don't know. Q. Was she zoomed? A. I don't know. Q. Was it digital? A. I don't know. I assume so. Q. Does it make a difference if it's digital or
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that reproduced everything in my viewfinder that was shown in this photograph. Once I was in that location I tried to put myself in a location that also captured what could be seen in the photograph of the two girls, which is Melendez Exhibit Number 4, and when I found that then I confirmed that I was able to reproduce what I could see in the Jeremy photo number 5, and was finally able to find a spot on the rock where I could capture what's shown in both photographs, Exhibit 4	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know. Q. What was the type of zoom she was using, if at all? A. I don't know. Q. Was she zoomed? A. I don't know. Q. Was it digital? A. I don't know. I assume so. Q. Does it make a difference if it's digital or optical?
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that reproduced everything in my viewfinder that was shown in this photograph. Once I was in that location I tried to put myself in a location that also captured what could be seen in the photograph of the two girls, which is Melendez Exhibit Number 4, and when I found that then I confirmed that I was able to reproduce what I could see in the Jeremy photo number 5, and was finally able to find a spot on the rock where I could capture what's shown in both photographs, Exhibit 4 and Exhibit 5, in my viewfinder.	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know. Q. What was the type of zoom she was using, if at all? A. I don't know. Q. Was she zoomed? A. I don't know. Q. Was it digital? A. I don't know. I assume so. Q. Does it make a difference if it's digital or optical? A. No.
14:32:13	Q. Tell me again exactly how you made the determination that they were 40 feet away? A. I started at the river edge with my camera, it's a single-lens reflex camera, and attempted to frame the view. And I started with I started with the photo with Jeremy in it and tried to reproduce or capture everything that can be seen in Melendez number 5 and see that in my viewfinder. Q. Okay. A. And I kept moving side to side and eventually back until I was at a location that reproduced everything in my viewfinder that was shown in this photograph. Once I was in that location I tried to put myself in a location that also captured what could be seen in the photograph of the two girls, which is Melendez Exhibit Number 4, and when I found that then I confirmed that I was able to reproduce what I could see in the Jeremy photo number 5, and was finally able to find a spot on the rock where I could capture what's shown in both photographs, Exhibit 4 and Exhibit 5, in my viewfinder. Q. Okay. So are you familiar with the term	14:35:41	Q. What method did you use to come up with the 40-foot measurement? A. A tape measure. Q. Okay. What kind of camera was did Ms. Melendez use? A. She had a cell phone, if I remember correctly. Q. What kind? A. I don't know. Q. What was the focal length? A. I don't know. Q. What was the type of zoom she was using, if at all? A. I don't know. Q. Was she zoomed? A. I don't know. Q. Was it digital? A. I don't know. I assume so. Q. Does it make a difference if it's digital or optical? A. No. Q. What type of

	Case 4:18-cv-04088-KES Do	cumen <u>t 2</u> 6-2 Filed 10	0/01/19 Page 18 of 22 PageID #: 237 ₂₁₅
14:40:32	Jeremy says.	14:43:04	A. I do not have an opinion.
14:40:34 2	Q. Ms. Melendez testified, according		·
14:40:38 3	that Maggie was nowhere near Jeremy; is tl	· · ·	,
14:40:42 4	A. Who?	14:43:16	
14:40:45 5	Q. Ms. Melendez.	14:43:20 5	
14:40:47 6	A. That's my recollection of her		. ,
14:40:49 7	yes.	14:43:35	A. Yes.
14:40:49	Q . What did Ms. Jayne say?	14:43:38	
14:40:51	A. She did not know.	14:43:40	, , , , , , , , , , , , , , , , , , ,
14:40:52 10	Q. And it's your testimony that Jere		
14:40:54 11	that Maggie was six feet away from him?	14:43:51 11	
14:40:56 12	A. That's what he	14:43:55 12	
14:40:57 13	That's what is written in the		
14:40:59 14	that she was six to eight feet away.	14:44:05 14	
14:41:01 15	Q. Okay. And in your	14:44:11 15	
14:41:01 15	, ,		, 3
	Do you have an opinion whether		
14:41:10 17	would have been appropriate to let Jeremy		
14:41:15 18	position he's shown in that photograph with		
14:41:18 19	being six feet away if he was monitoring he		
14:41:31 20	A. No. As a adult caregiver, I do		
14:41:36 21	would be responsible to have a 14 year		
14:41:40 22	behavior of a five year old.	14:44:36 22	,
14:41:46 23	Q. These are two of the other kids -		
14:41:49 24	A. Yes.	14:44:40 24	
14:41:49 25	Q in Exhibit 4.	14:44:43 25	3 3 .
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	1-800-553-1953 info@stirewalt.com		1-800-553-1953 info@stirewalt.com
		214	216
14:41:50	A. Yes.	14:44:46 1	A. No.
14:41:52	Q. Inadequate supervision again by	mom and mom? 14:44:46 1	A. No. Q. That's the gold standard for what
_	Q. Inadequate supervision again byA. Eleven and 12 year olds have	mom and mom? 14:44:46 1 14:44:47 2 good motor 14:44:49 3	A. No. Q. That's the gold standard for what constitutes an appropriate caution or warning sign.
14:41:52 2 14:41:56 3 14:41:58 4	Q. Inadequate supervision again byA. Eleven and 12 year olds haveskills, they're able to recognize perceive	mom and mom? 14:44:46 1 14:44:47 2 2 14:44:49 3 14:44:53 4	A. No. Q. That's the gold standard for what constitutes an appropriate caution or warning sign. A. No.
14:41:52 2 14:41:56 3 14:41:58 4 14:42:03 5	 Q. Inadequate supervision again by A. Eleven and 12 year olds have skills, they're able to recognize perceiv Q. Were there any 11 and 12 year of 	mom and mom? 14:44:46 1 14:44:47 2 2 2 3 3 14:44:49 3 14:44:53 4 14:44:55 5 5 5 5 6 14:44:55 5 6 14:44:45 6 14:44	 A. No. Q. That's the gold standard for what constitutes an appropriate caution or warning sign. A. No. Q. Have you ever testified before that a sign
14:41:52 2 14:41:56 3 14:41:58 4 14:42:03 5 14:42:06 6	 Q. Inadequate supervision again by A. Eleven and 12 year olds have skills, they're able to recognize perceiv Q. Were there any 11 and 12 year of in this group of 28 you looked at in June? 	mom and mom? 14:44:46 1 14:44:47 2 2 14:44:49 3 14:44:53 4 14:44:55 5 14:45:02 6	 A. No. Q. That's the gold standard for what constitutes an appropriate caution or warning sign. A. No. Q. Have you ever testified before that a sign a warning sign ought comply with the applicable
14:41:52 2 14:41:56 3 14:41:58 4 14:42:03 5 14:42:06 6 14:42:09 7	 Q. Inadequate supervision again by A. Eleven and 12 year olds have skills, they're able to recognize perceiv Q. Were there any 11 and 12 year of in this group of 28 you looked at in June? A. I think I said some might be a 	mom and mom? 14:44:46 1 14:44:47 2 2 14:44:49 3 4 14:44:59 4 14:45:50 5 14:45:04 7 14:45	 A. No. Q. That's the gold standard for what constitutes an appropriate caution or warning sign. A. No. Q. Have you ever testified before that a sign a warning sign ought comply with the applicable ANSI standard?
14:41:52 2 14:41:56 3 14:41:58 4 14:42:03 5 14:42:06 6 14:42:09 7 14:42:12 8	 Q. Inadequate supervision again by A. Eleven and 12 year olds have skills, they're able to recognize perceiv Q. Were there any 11 and 12 year of in this group of 28 you looked at in June? A. I think I said some might be at 	mom and mom? 14:44:46 1 14:44:47 2 2 3 3 4 3 4 3 4 3 4 3 4 3 4 3 5 5 5 5 5 5	A. No. Q. That's the gold standard for what constitutes an appropriate caution or warning sign. A. No. Q. Have you ever testified before that a sign a warning sign ought comply with the applicable ANSI standard? A. Yes.
14:41:52 2 14:41:56 3 14:41:58 4 14:42:03 5 14:42:06 6 14:42:09 7 14:42:12 8 14:42:13 9	 Q. Inadequate supervision again by A. Eleven and 12 year olds have skills, they're able to recognize perceiv Q. Were there any 11 and 12 year of in this group of 28 you looked at in June? A. I think I said some might be at 12. Q. So they don't need their parents 	mom and mom? 14:44:46 1 14:44:47 2 2 2 3 3 4 3 4 3 4 3 4 3 4 3 4 3 4 3 5 5 5 5	A. No. Q. That's the gold standard for what constitutes an appropriate caution or warning sign. A. No. Q. Have you ever testified before that a sign a warning sign ought comply with the applicable ANSI standard? A. Yes. Q. Why did you testify to that?
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1 complies with the ANSI Z535 standard but not be an 1 pre-2002 standard, but just because it doesn't comply 14:46:30 2 2 effective warning. with the 2011 standard, it has all the pieces that 14:46:36 3 To be clear, you have testified previously 3 would make it an effective warning 14:46:39 14:50:33 4 that a warning sign needs to comply with the 4 Does this sign comply with the ANSI standard 14:50:36 14:46:43 applicable ANSI standard; correct? In prior cases. 5 that was in effect as of March 18, 2018 or not? 14:50:41 14:46:50 6 "Needs" to comply. Yes, because of the 6 As I said, it does not. 14:50:47 14:46:58 7 formatting requirements 14:50:49 7 O The ANSI standard sets the generally 14:47:02 8 8 accepted protocol for evaluating prospective warning Okay. And you've written about that as 14:50:52 14:47:03 9 well: correct? 9 symbols and signs: true? 14:50:56 14:47:05 Yes. That's the -- the minimum standard for 14:51:00 10 It provides one methodology for evaluating A. 14:47:05 11 14:51:04 11 a warning symbols. 14:47:08 Correct. This sign, Exhibit 19, doesn't 14:51:04 12 12 Q. Q. And it's the methodology that's accepted 14:47:09 14:47:13 13 meet the minimum standard for warning; correct? 14:51:07 13 within the field of human-factors engineering; 14 14:51:11 14 14:47:16 A. I didn't say that. It's -- It's not correct? 14:47:19 15 14:51:12 15 compliant with the recent standards, but it's con --Α. Sure 14:51:15 16 16 it's compliant with the pre-2002 standard. And in my Q. Tt --14-47-24 14:47:30 17 report I walk through how the pre-2002 and the 2011 14:51:15 17 The ANSI standard incorporates generally 14:47:36 18 14:51:18 18 standards are different in terms of the color choice, accepted human-factors engineering techniques and 14:47:43 19 you know, for backgrounds, and in terms of the 14:51:21 19 beliefs; correct? 14:47:46 20 formatting of the signal word and its background, and 14:51:22 20 I'm sorry. Ask that again. 14:47:49 **21** 14:51:23 21 in terms of pictorials, and in terms of the inclusion The ANSI standard incorporates generally 14:47:55 **22** of hazard instruction and consequence statements. So 14:51:26 22 accepted human-factors engineering techniques; 14:48:00 23 14:51:30 23 correct? those pieces of the warning are described in the 14:48:07 24 pre-2002 standard and the 2011 standard. 14:51:31 24 A. "Techniques." 14:48:12 **25** 14:51:32 25 So one of the ways that this sign is not Q. Beliefs? Principles? STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES 1-800-553-1953 info@stirewalt.com 1-800-553-1953 info@stirewalt.com 1 consistent with the 2011 standard is the formatting of 1 As I said, the ANSI Z535 standards are based 14:51:36 14:48:15 2 the signal word. So I think it's Exhibit R of my 2 on human-factors research on what makes an effective 14:48:23 14:51:40 3 report shows the older standard and the newer warning, so -- so -- so the ANSI standards have 14:51:44 14:48:30 4 standard. So there's not a whole lot of difference, 4 incorporated some of those things, such as use of a 14:51:49 14:48:35 5 so I could not say that the two -- pre-2002 standard, 5 signal word, use of pictorials, when to use block 14:51:52 14-48-39 6 the format would be any more or any less effective 6 capital letters and when to use mixed case, font size, 14:52:00 14:48:46 than the 2011 standard. You know, both standards ask 7 a number of things, you know, all based on 7 14:48:50 14:52:04 8 for a signal word, you know, the difference is the --8 human-factors research. 14:52:07 14:48:54 9 you know, the -- I guess the extra clutter in the All right. Let me rephrase that. 14:48:59 14:52:08 10 background for the signal word in the pre-2002 14:52:10 10 The ANSI standard, ANSI Z-35, incorporates 1.4·40·01 11 standard, and the difference is als -- and so that 14:52:14 11 generally accepted human-factors engineering 14-49-04 14:49:12 12 extra clutter most likely would not have much, if any, 14:52:16 12 principles; correct? 14:49:18 13 effect on how people would notice, read, understand or 14.52.22 13 You know, again, "principles." You know --14:49:23 14 14:52:28 14 follow a warning. The second difference is the You know, I'm sure Ms. Gill wrote these questions for 14:49:27 15 addition of the exclamation mark and the warning 14:52:30 15 you, but they just don't make sense. So it -- As I've 14:49:32 16 14:52:36 16 said, the ANSI Z535 standards are based on triangle in the 2011 standard. That symbol can be 14:49:41 17 14:52:39 17 important in providing -- you know, encouraging human-factors research, it's data that has come from 14:49:46 18 14:52:45 18 somebody to notice it, but research has shown that doing -- conducting empirical research with what is 14:49:50 19 14:52:48 19 noticeable, what makes a display noticeable, what people don't pay that much attention to the 14:52:51 20 14:49:53 20 exclamation mark and the triangle. So -- So in makes text readable, understandable, based on research 14:50:00 **21** 14:52:57 21 effect, the differences in format between, you know, that shows which of these components provided in one 14:53:03 22 14:50:04 22 the pre-2002 ANSI Z535 standard and the 2011 standard piece are most likely to result in people following 14:50:09 **23** 14:53:07 23 is quite minimum -- minimal, and so this warning that these warnings. So a human-factors principle might be 14:50:16 24 was shown and displayed in Falls Park is close --14:53:14 24 true in that a human-factors principle might be 14:50:22 **25** [coughing] -- excuse me, closer to the two thousand --14:53:18 25 something like, you know, provide a list of items in a STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES

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14:53:23	bullet format as opposed to one block text. ANSI Z535	14:56:45 1 means in this situation.
14:53:30 2	certainly recommends that.	14:56:47 Q . Isn't it true that the river the
14:53:31 3	Q. Is it your	14:56:50 3 characteristics of the area around the river differ
14:53:32 4	Are you done?	14:56:54 4 markedly a mile, two miles, three miles down river
14:53:34 5	A. So	14:56:57 5 than it does in this urban park setting?
14:53:34 6	But so yes, there might be some	14:57:00 6 A. I have not been to any other parts of the
14:53:37 7	human-factors principles that are incorporated in the	14:57:02 7 river.
14:53:40 8	ANSI Z535 standards, but as a blanket statement, you	14:57:03 8 Q . Okay. So again, warnings are most effective
14:53:44	know, it somehow incorporates all human-factors	14:57:07 9 when they're placed at the time and location where a
14:53:48 10	principles is just not accurate or correct in any way.	14:57:10 10 person needs it; right?
14:53:52 11	Q. How far was the closest warning sign or	14:57:11 11 A. If you need a warning, then yes,
14:53:56 12	caution sign to the area where Maggie went in the	14:57:11 12 Q. Okay.
14:54:01 13	water; how many feet?	14:57:13 13 A. that is true. You need to place it
14:54:35 14	A. (Witness reviewing documents.) Well the	14:57:15 14 Q. Right.
14:54:39 15	closest sign was maybe maybe a hundred feet,	14:57:17 15 A. at time and location.
14:54:39 16	Q. Did you meas	14:57:19 16 Q. I just need to know if you are of the
14:54:52 17	A. maybe a little bit more.	14:57:20 17 opinion that having the closest warning sign to the
14:54:53 18	Q. Did you measure it?	14:57:24 18 area where Maggie fell in being 60-some feet away was
14:54:55 19	A. In the past I've measured the width of the	14:57:31 19 or was not sufficiently close in terms of location to
14:54:58 20	Oh, actually, no, maybe more like 50 or 60 feet. I	14:57:38 20 make it effective.
14:55:03 21	measured the using a Google aerial photo, measured	14:57:42 21 A. In this situation 60 feet could be close
14:55:09 22	the distance from the area where Maggie fell to the	14:57:51 22 enough. Now the problem with this particular warning
14:55:14 23	sidewalk, and that was about a hundred feet.	14:57:54 23 sign is it's oriented in such a way that if you're
14:55:18 24	Q . Okay.	14:57:57 24 standing where Maggie fell you would not be able to
14:55:19 25	A. So the closest sign to where Maggie fell was	14:58:00 25 see this sign, you know, so, you know, we're talking
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14:55:24	at the intersection of the sidewalk and the pedestrian	14-58-03 1 about not just distance, but we're also talking about
14:55:28 2	at the intersection of the sidewalk and the pedestrian bridge, so that might be, you know, maybe 60 or 70	14:58:03 1 about not just distance, but we're also talking about 14:58:07 2 orientation in terms of what would make a warning more
_	·	14:58:07 2 orientation in terms of what would make a warning more 14:58:10 3 effective. So in this situation if you wanted a if
14:55:28 2	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it?	orientation in terms of what would make a warning more 14:58:10 effective. So in this situation if you wanted a if 14:58:16 you if you thought there was a need for a warning
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from	orientation in terms of what would make a warning more 14:58:10 effective. So in this situation if you wanted a if 14:58:16 you if you thought there was a need for a warning 14:58:19 sign then you want to place it in places where people
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph?	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 7	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes.	orientation in terms of what would make a warning more 14:58:10 3 effective. So in this situation if you wanted a if 14:58:16 4 you if you thought there was a need for a warning 14:58:19 5 sign then you want to place it in places where people 14:58:23 6 would see it before they go wandering off the 14:58:27 7 sidewalks and to the edge of the river.
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 7 14:55:39 8	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay.	orientation in terms of what would make a warning more 14:58:10 3 effective. So in this situation if you wanted a if 14:58:16 4 you if you thought there was a need for a warning 14:58:19 5 sign then you want to place it in places where people 14:58:23 6 would see it before they go wandering off the 14:58:27 7 sidewalks and to the edge of the river. 14:58:30 8 Q. So if I understand you correctly, if we
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 7 14:55:39 8 14:55:40 9	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. Q. So if I understand you correctly, if we assume for a moment that a warning was needed, the
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 7 14:55:39 8 14:55:40 9 14:55:43 10	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk.	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. G. So if I understand you correctly, if we assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 7 14:55:39 8 14:55:40 9 14:55:43 10 14:55:45 11	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the would see it before they go wandering off the sidewalks and to the edge of the river. Q. So if I understand you correctly, if we assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was
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14:55:28	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it?	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. Government assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was located on the day of the incident. Is that a fair statement, sir?
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14:55:28	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it? A. I do. Q. And is it your opinion that your estimate of 60 feet from the closest sign to the point where	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. Government assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was located on the day of the incident. Is that a fair statement, sir? And I'm saying no, not necessarily. Government assume for a moment that a warning was needed.
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 8 14:55:40 9 14:55:43 10 14:55:45 11 14:55:45 11 14:55:45 12 14:55:53 14 14:55:53 15 14:55:57 16 14:56:00 17	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it? A. I do. Q. And is it your opinion that your estimate of 60 feet from the closest sign to the point where Maggie fell in was a was sufficiently close to the	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. So if I understand you correctly, if we assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was located on the day of the incident. Is that a fair statement, sir? A. Well And I'm saying no, not necessarily. A. Because proximate to the
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14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 8 14:55:40 9 14:55:43 10 14:55:45 11 14:55:45 11 14:55:45 15 14:55:51 13 14:55:51 15 14:55:57 16 14:56:00 17 14:56:00 18 14:56:10 19 14:56:13 20	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it? A. I do. Q. And is it your opinion that your estimate of 60 feet from the closest sign to the point where Maggie fell in was a was sufficiently close to the location where she fell in to constitute an effective warning?	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. O. So if I understand you correctly, if we assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was located on the day of the incident. Is that a fair statement, sir? A. Well And I'm saying no, not necessarily. A. Because proximate to the area of the fall presumes that you can anticipate where people
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14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 7 14:55:39 8 14:55:40 9 14:55:43 10 14:55:45 11 14:55:45 12 14:55:51 13 14:55:51 13 14:55:57 16 14:56:00 17 14:56:00 17 14:56:01 19 14:56:10 19 14:56:22 21	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it? A. I do. Q. And is it your opinion that your estimate of 60 feet from the closest sign to the point where Maggie fell in was a was sufficiently close to the location where she fell in to constitute an effective warning? A. Well, you know, "close" in this case would be placing warning signs along this particular edge of the river maybe every 50 feet. Maybe having three	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. So if I understand you correctly, if we assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was located on the day of the incident. Is that a fair statement, sir? A. Well Make Because proximate to the area of the fall presumes that you can anticipate where people will fall off the edge of the of the canyon wall, and which means then that anywhere that there is a cliff where someone could fall off of you need a
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 8 14:55:40 9 14:55:43 10 14:55:45 11 14:55:45 11 14:55:53 14 14:55:53 15 14:55:57 16 14:56:00 17 14:56:06 18 14:56:10 19 14:56:13 20 14:56:25 21 14:56:29 22 14:56:34 23	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it? A. I do. Q. And is it your opinion that your estimate of 60 feet from the closest sign to the point where Maggie fell in was a was sufficiently close to the location where she fell in to constitute an effective warning? A. Well, you know, "close" in this case would be placing warning signs along this particular edge of the river maybe every 50 feet. Maybe having three signs along the edge of the river in this location,	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. So if I understand you correctly, if we assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was located on the day of the incident. Is that a fair statement, sir? A. Well And I'm saying no, not necessarily. A. Because proximate to the Well, one, you say proximate to the area of the fall presumes that you can anticipate where people will fall off the edge of the of the canyon wall, and which means then that anywhere that there is a cliff where someone could fall off of you need a warning every few feet to make sure that people
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 8 14:55:40 9 14:55:43 10 14:55:45 11 14:55:45 11 14:55:53 14 14:55:53 15 14:55:57 16 14:56:00 17 14:56:00 17 14:56:10 19 14:56:13 20 14:56:25 21 14:56:29 22 14:56:39 24	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it? A. I do. Q. And is it your opinion that your estimate of 60 feet from the closest sign to the point where Maggie fell in was a was sufficiently close to the location where she fell in to constitute an effective warning? A. Well, you know, "close" in this case would be placing warning signs along this particular edge of the river maybe every 50 feet. Maybe having three signs along the edge of the river in this location, which means that you want to do the same thing along	14:58:07 2 orientation in terms of what would make a warning more 14:58:10 3 effective. So in this situation if you wanted a if 14:58:16 4 you if you thought there was a need for a warning 14:58:19 5 sign then you want to place it in places where people 14:58:27 7 sidewalks and to the edge of the river. 14:58:30 8 Q. So if I understand you correctly, if we 14:58:30 10 assume for a moment that a warning was needed, the 14:58:31 10 warning sign needed to be more proximate to the area 14:58:42 11 of the fall than it was lo than where it was 14:58:47 12 located on the day of the incident. Is that a fair 14:58:51 14 A. Well 14:58:51 15 And I'm saying no, not necessarily. 14:58:51 16 Q. Oh. 14:58:52 17 A. Because proximate to the 14:58:59 18 Well, one, you say proximate to the area of 14:59:02 19 the fall presumes that you can anticipate where people 14:59:02 20 will fall off the edge of the of the canyon wall, 14:59:10 21 and which means then that anywhere that there is a 14:59:14 22 cliff where someone could fall off of you need a 14:59:14 23 warning every few feet to make sure that people 14:59:28 24 approaching this area would see it here, because if
14:55:28 2 14:55:32 3 14:55:32 4 14:55:35 5 14:55:37 6 14:55:39 8 14:55:40 9 14:55:43 10 14:55:45 11 14:55:45 11 14:55:53 14 14:55:53 15 14:55:57 16 14:56:00 17 14:56:00 17 14:56:10 19 14:56:10 19 14:56:25 21 14:56:29 22 14:56:34 23 14:56:39 24	bridge, so that might be, you know, maybe 60 or 70 feet. Q. Have you measured it? A. Eyeballing it from Q. From an aerial photograph? A. Yes. Q. Okay. A. Based on my previous measurement of 100 feet from the river's edge to the sidewalk. Q. Do you agree with the proposition that warnings are most effective when they're placed at the time and location where a person needs it? A. I do. Q. And is it your opinion that your estimate of 60 feet from the closest sign to the point where Maggie fell in was a was sufficiently close to the location where she fell in to constitute an effective warning? A. Well, you know, "close" in this case would be placing warning signs along this particular edge of the river maybe every 50 feet. Maybe having three signs along the edge of the river in this location, which means that you want to do the same thing along the entire river on both sides. That's what "close"	orientation in terms of what would make a warning more effective. So in this situation if you wanted a if you if you thought there was a need for a warning sign then you want to place it in places where people would see it before they go wandering off the sidewalks and to the edge of the river. So if I understand you correctly, if we assume for a moment that a warning was needed, the warning sign needed to be more proximate to the area of the fall than it was lo than where it was located on the day of the incident. Is that a fair statement, sir? A. Well And I'm saying no, not necessarily. A. Because proximate to the Well, one, you say proximate to the area of the fall presumes that you can anticipate where people will fall off the edge of the of the canyon wall, and which means then that anywhere that there is a cliff where someone could fall off of you need a warning every few feet to make sure that people approaching this area would see it here, because if they're over there they might not see it over there

1 ten feet over, twenty feet over, so then you need statement that "no swimming, you could drown," 14:59:30 2 2 warning signs along the river, everywhere along the 15:02:29 "turbulent water, you could drown." That explicit 14:59:34 3 river, which is, I think, an untenable position. So 3 statement is not needed because it's understood in the 14:59:37 15:02:32 4 better positioned would be to provide warning signs in 4 pictorial. 14:59:42 areas before [coughing] -- before people are about to 5 5 15:02:37 Q. Okay. 14:59:49 go off the sidewalk and -- and wander across the grass 6 6 The same with the slippery rocks. "Slippery 15:02:38 14:59:56 7 or -- or along -- towards the river's edge. And that 15:02:40 7 rocks, you might fall," that's not needed to say "stay 15:00:00 8 8 might be several different locations, but not off the rocks" or "keep off the rocks." 15:02:46 15:00:05 9 necessarily, you know, near the actual hazard. There 9 Isn't it a basic principle of human factors 15:02:48 15:00:07 10 where you would need a warning is when they make the 15:02:53 10 that a warning needs to describe the specific nature 15:00:15 15:00:19 11 decision to leave the sidewalk and go to the river, 15:02:56 11 of the hazard, the consequences, and how to comply in 15:02:59 12 12 then you would want a warning at that place, which order for it to be even remotely considered effective? 15:00:22 15:00:24 13 could be far away, it might be a hundred feet. So --15:03:04 13 No, I would not agree with that just based 15:00:31 14 And it might be closer, it depends on where that 15:03:07 14 on the research I just told you about. 15:00:34 15 sidewalk is. But it's that decision point that people Would you agree that to increase the 15:03:09 15 16 need to be warned about the hazard of the cliff if in 15:03:10 16 probability of compliance with a warning, a warning 15:00:36 fact there's a need to warn about the hazard of the 15:00:42 17 15:03:13 17 should explicitly describe the consequences of failing 15:00:44 18 15:03:16 18 cliff to heed the warning? 15:00:45 19 Q. You are highly trained in human factors; 15:03:18 19 Again, the instruction and consequence 15:00:49 20 true? 15:03:21 20 statements are not needed if they are -- if they are 15:00:50 **21** 15:03:27 21 redundant with other information that's in the Yes. A. 15:00:51 **22** You're familiar with basic precepts, 15:03:29 22 warning Q. 15:00:54 23 15:03:30 23 research and principles of human factors? Q. Do you agree with the statement that people 15:00:57 24 Yes 15:03:31 24 are less likely to understand or comply with a hazard A. 15:00:58 **25** 15:03:34 25 if they do not know what it is? Q. Does this sign comply with basic research STIREWALT & ASSOCIATES STIREWALT & ASSOCIATES 1-800-553-1953 info@stirewalt.com 1-800-553-1953 info@stirewalt.com 228 1 and principles of human factors as to what constitutes 1 Yeah, that's certainly true. 15:03:38 15:01:00 2 an effective warning with respect to the items that it Do you agree with the statement that to 15:01:03 15:03:44 3 warns of? increase the probability of compliance with a warning, 15:03:46 15:01:07 4 4 warnings should provide brief and explicit A. Yes, as I said in my report. 15:01:09 15:03:48 It does. 5 instructions on how to comply? 15:03:50 15:01:11 6 Δ Yes. 6 If the information is not already provided, 15:03:55 15:01:12 7 then a brief and explicit instruction statement is 7 Q. Notwithstanding the fact that it does not 15:01:13 15:03:58 8 comply with ANSI: correct? 8 necessary. 15:04:02 15:01:15 9 THE WITNESS: And I'm going to get some Well, as I said, it complies with an older 15:04:04 15:01:17 10 version of ANSI Z535, and the differences between the 15:04:06 10 water 15:01:20 pre-2002 and the 2011 are insignificant formatting 15:04:38 11 (Discussion off the stenographic 11 15:01:27 15:01:31 12 issues and not something that would significantly 15:04:38 12 record.) 15:01:35 13 affect the effectiveness of the sign 15:04:51 13 BY MR. SIEFF: 15:01:38 14 15:04:51 14 And notwithstanding the fact that it does Q. Do you agree that in an area where drowning 15:04:55 15 15 not contain explicit warnings and instructions on how is a hazard, that the action warning of "caution" is 15:01:40 15:01:44 16 to avoid the warnings, or avoid the hazard? 15:05:04 16 appropriate? 15:05:07 17 15:01:47 17 Well as I said in my report, there's A. I'm sorry. Ask that again. 15:01:50 18 15:05:08 18 research that indicates that redundant information can O Sure. 15:01:54 19 be omitted from a warning without decreasing --15:05:09 19 In an area where the hazard of drowning is 15:01:59 20 without substantially decreasing the effectiveness of 15:05:13 20 present, do you agree that the action word of 15:02:01 **21** 15:05:21 21 the warning. So in this case, you know, an explicit "caution" is appropriate, or should it be something 15:02:05 **22** 15:05:23 22 warning might be "stay off the rocks," no -- and I stronger? 15:02:12 **23** 15:05:30 23 guess "no swimming in turbulent water." They both Yes, it should be something stronger. 15:02:15 24 15:05:32 24 imply that there's a drowning hazard based -- just "Danger" would be a better signal word here than 15:02:22 25 based on the pictorials. You don't need an explicit 15:05:35 25 "caution." 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15:05:35	Q. All right. So you do agree that at least as	15:08:27 1	A. Yes.
15:05:38 2	far as the signal word, you are critical of the use of	15:08:29 2	Q. The first tier of the safety hierarchy is to
15:05:42 3	the term "caution."	15:08:32 3	design out a hazard; correct?
15:05:43 4	A. Yes. "Danger" would be a much better word.	15:08:33 4	A. Yes.
15:05:45 5	Q. And you are critical of the coloring on this	15:08:34 5	Q. The next one's to guard against a hazard;
15:05:48 6	sign; are you not?	15:08:37 6	correct?
15:05:51 7	A. Well if if if the signal word were	15:08:37 7	A. Yes.
15:05:58	"danger" and we wanted to be to comply with Z535,	15:08:38	Q. And the third and the least effective is to
15:06:02	then the background for the signal word would be red,	15:08:40	warn against a hazard; correct?
15:06:05 10	and red is more readily denotes or connotes hazard	15:08:42 10	A. Yes.
15:06:11 11	than yellow.	15:08:42 11	Q. In this instance I think it would you
15:06:12 12	Q. You still do research and writing and things	15:08:44 12	would agree with me that it'd be very difficult to
15:06:16 13	like that and some work outside of the litigation	15:08:47 13	design out the hazard of the rushing water, the rocks
15:06:22 14	field. Have you ever, in your career, recommended to	15:08:50 14	and the foam.
15:06:25 15	a client use of a non-ANSI-compliant warning or	15:08:51 15	A. Yes.
15:06:30 16	caution sign?	15:08:55 16	Q. Let's talk about guarding against it. Are
15:06:32 17	A. No.	15:08:57 17	you aware of anything that would have prevented the
15:06:33 18	Q. Would you ever recommend to a client use of	15:08:59 18	city from using temporary fencing in the area where
15:06:37 19	a non-ANSI-compliant sign?	15:09:03 19	Maggie fell during high foam season?
15:06:40 20 15:06:43 21	No. A. No. A. No. A. Have you done any testing to determine	15:09:06 20 15:09:07 21	A. No.
15:06:43 21	Q. Have you done any testing to determine whether or not the warning sign at issue that's in	15:09:07 2 1 15:09:08 22	Q. Are you aware of anything that would have prevented the city from utilizing something along the
15:06:48 22 15:06:51 23	front of you has achieved compliance or noncompliance?	15:09:08 22 15:09:13 23	lines of LED lighting like you might see on a road
15:06:59 24	If you understand my question?	15:09:17 24	warning of road construction, in the area where Maggie
15:07:01 25	A. Yes, and I've not done any study to evaluate	15:09:20 25	fell during high flood season?
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15:07:04	that, but as I describe in my report, it has the	15:09:23	A. Am I aware of anything that might prevent
15:07:10 2	effectiveness it has the components of an effective	15:09:25 2	them from doing that?
15:07:13	warning, and most likely would be noticed, read,	15:09:26 3	Q . Yeah.
15:07:15 4	understood and followed.	15:09:26 4	A. No. They can do whatever they want, so.
15:07:16 5	Q. And you	15:09:28 5	Q . I'm just asking you if you are aware of
15:07:17 6	So you believe that it's an effective	15:09:30 6	anything that prevented them.
15:07:19 7	warning sign?	15:09:32 7	A. Well and placing warnings, and fencing,
15:07:21	A. Yes.	15:09:39	barricades and, you know, a variable messages sign
15:07:23	Q. Achieving compliance?	15:09:41 9	which is a warning, you have to take into a number of
15:07:27 10	A. Well you rarely get a hundred percent	15:09:45 10	factors. And yes, you could put variable messaging
15:07:31 11	compliance, so it's, you know	15:09:53 11	signs up all over the park if you wanted to. I don't
15:07:34 12 15:07:37 13	MR. SIEFF: Can you mark that for me? A the research literature would you	15:09:56 12 15:09:59 13	think it would be a very pleasant place to visit. So if I were designing this, I would not recommend
15:07:42 14	know, shows, you know, sometimes you get a hundred	15:10:02 14	putting up variable messaging signs in this park.
15:07:42 14 15:07:44 15	percent compliance with a good sign, and sometimes	15:10:02 14 15:10:07 15	Q. Knowing that we've had a number of drownings
15:07:44 15	maybe more like 60 percent. So as the you know,	15:10:07 15	at least alleged to have been caused due to the
15:07:54 17	there are a number of factors that go into whether	15:10:13 17	presence of high foam during the foam runoff, the
15:07:58 18	someone will follow a sign or not. Formatting is just	15:10:17 18	spring runoff, do you think it would be prudent to do
15:08:02 19	one of those factors in the Z535 standard, and this	15:10:21 19	to take any other action of any type or kind
15:08:08 20	standard just addresses formatting issues, but this	15:10:29 20	relative to the accumulation of foam at Falls Park?
15:08:13 21	component I'm sorry. This warning sign has	15:10:33 21	Whether it be additional warnings, or barricades, or
15:08:15 22	components of an effective sign that could achieve,	15:10:37 22	guarding, or an Observation Tower or deck or anything
15:08:22 23	you know, significant amounts of compliance.	15:10:41 23	of the sort?
15:08:25 24	Q. Okay. You're familiar with the safety	15:10:47 24	A. As I've said multiple times, I don't
15:08:27 25	hierarchy.	15:10:49 25	consider the foam to be a hazard that's independent of
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